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Contents

Federal Register

Vol. 86, No. 65

Wednesday, April 7, 2021

Air Force Department
NOTICES
Environmental Impact Statements; Availability, etc.:
Record of Decision for the F–35A Wing Beddown and MQ–9 Wing Beddown, 18044
Intent to Grant an Exclusive Patent License with a Joint Ownership Agreement, 18044

Bureau of Consumer Financial Protection
RULES
Supervision and Enforcement Priorities Regarding Housing Insecurity, 17897–17899
NOTICES
Privacy Act; System of Records, 18041–18043

Centers for Disease Control and Prevention
NOTICES
Meetings, 18061

Civil Rights Commission
NOTICES
Meetings:
South Carolina Advisory Committee, 18035

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Community Living Administration
NOTICES
Program Application Instructions:
State Councils on Developmental Disabilities to Expand COVID–19 Vaccine Access for People with Disabilities, 18063–18065
University Centers for Excellence in Developmental Disabilities Network to Expand COVID–19 Vaccine Access for People with Disabilities, 18061–18063

Comptroller of the Currency
NOTICES
Meetings:
Mutual Savings Association Advisory Committee, 18122

Defense Department
See Air Force Department

Education Department
NOTICES
Applications for New Awards:
Alaska Native Education Program; Corrections, 18045–18046
Supplemental Assistance to Institutions of Higher Education; Correction, 18044–18045
Coronavirus Response and Relief Supplemental Appropriations Act Supplemental Aid to Institutions of Higher Education Application:
Correction, 18045

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18046
Emergency Order:
Electric Reliability Council of Texas to Operate Power Generating Facilities under Limited Circumstances in Texas as a Result of Extreme Weather, 18046–18047

Environmental Protection Agency
RULES
Pesticide Tolerances:
Penthiopyrad, 17917–17920
Spinetoram, 17907–17910
Spinosad, 17910–17914
Tolerance Exemption:
2,2-Dimethyl-1,3-dioxolane-4-methanol, 17914–17917
NOTICES
Administrative Settlement Agreement:
CERCLA, 18060
Privacy Act; System of Records, 18057–18060
Requests for Nominations:
National Environmental Education Advisory Council, 18056–18057

Federal Aviation Administration
RULES
Airworthiness Directives:
MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes, 17905–17907
Rockwell Collins, Inc., Global Positioning Systems, 17902–17905
The Boeing Company Airplanes, 17899–17902
PROPOSED RULES
Airworthiness Directives:
Airbus SAS Airplanes, 17995–17998
MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes, 17998–18000
The Boeing Company Airplanes, 17993–17995
NOTICES
Meetings:
Research, Engineering, and Development Advisory Committee, 18111

Federal Communications Commission
RULES
Establishing the Digital Opportunity Data Collection:
Modernizing the Form 477 Data Program, 18124–18163
Facilitating Shared Use in the 3100–3550 MHz Band, 17920–17956
PROPOSED RULES
Auction of Flexible-Use Service Licenses in the 3.45–3.55 GHz Band for Next-Generation Wireless Services; Competitive Bidding Procedures for Auction 110, 18000–18014

Federal Emergency Management Agency
NOTICES
Flood Hazard Determinations; Changes, 18065–18067
Flood Hazard Determinations; Proposals, 18067–18068

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18049–18051
Combined Filings, 18047–18049, 18052–18053, 18055

Complaint:
Jackson Generation, LLC v. PJM Interconnection, LLC, 18051
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Cool Springs Solar, LLC, 18051–18052
Quitman II Solar, LLC, 18054
Meetings:
The Office of Public Participation; Virtual Listening Sessions, 18053–18054
Petition for Declaratory Order:
Transcontinental Gas Pipe Line Co., LLC, 18054–18055
Waiver Period for Water Quality Certification Application:
Washington Electric Cooperative, Inc., 18056

Federal Maritime Commission
NOTICES
Agreements Filed, 18060

Federal Motor Carrier Safety Administration
NOTICES
Parts and Accessories Necessary for Safe Operation; Exemption Applications:
Loomis Armored US, LLC, 18111–18112

Federal Railroad Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18112–18114

Federal Reserve System
NOTICES
Change in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 18060–18061

Fish and Wildlife Service
RULES
Endangered and Threatened Species:
Designation of Critical Habitat for Candy Darter, 17956–17992
PROPOSED RULES
Endangered and Threatened Species:
12-Month Petition Finding and Threatened Species Status with Section 4(d) Rule for Suwannee Alligator Snapping Turtle, 18014–18034

Health and Human Services Department
See Centers for Disease Control and Prevention
See Community Living Administration
See National Institutes of Health

Homeland Security Department
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services
NOTICES
Meetings:
President's National Security Telecommunications Advisory Committee, 18068–18069

Interior Department
See Fish and Wildlife Service
See National Park Service
See Office of Natural Resources Revenue

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Light-Walled Rectangular Pipe and Tube from Turkey, 18035–18037
Phosphate Fertilizers from the Kingdom of Morocco and the Russian Federation, 18037–18039

Justice Department
NOTICES
Proposed Consent Decree:
CERCLA, 18072–18073
Clean Air Act, 18073

Labor Department
See Occupational Safety and Health Administration

Maritime Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application and Reporting Requirements for Participation in the Maritime Security Program, 18116–18117
Application for Construction Reserve Fund and Annual Statements, 18114
Center of Excellence for Domestic Maritime Workforce Training and Education Annual Application for Designation, 18115
Request for Waiver of Service Obligation, Request for Deferment of Service Obligation, and Application for Review, 18115–18116

National Institutes of Health
NOTICES
Charter Renewal:
Center for Scientific Review Advisory Council, 18065
Meetings:
Center for Scientific Review, 18065

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas' Species Working Groups, 18039–18040
Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review, 18040–18041
Fisheries of the South Atlantic; Southeast Data, Assessment, and Review, 18039
Mid-Atlantic Fishery Management Council, 18041
Pacific Fishery Management Council, 18040

National Park Service
NOTICES
Minor Boundary Revision at San Antonio Missions National Historical Park, 18070–18071

Nuclear Regulatory Commission
NOTICES
Environmental Assessments; Availability, etc.:
Southern Nuclear Operating Company, Inc Vogtle Electric Generating Plant, Units 1 and 2, 18076–18080
Exemption; Issuance:
Pacific Gas and Electric Co., Diablo Canyon Nuclear Power Plant, Units 1 and 2, 18081–18082
Meetings:
Advisory Committee on Reactor Safeguards, 18080–18081

Occupational Safety and Health Administration
NOTICES
Application:
SGS North America, Inc.; Expansion of Recognition and Proposed Modification to the Nationally Recognized Testing Laboratory Program's List of Appropriate Test Standards, 18073–18076
Withdrawal of Application for Variance and Revocation of Interim Order:
Ballard Marine Construction, 18073

Office of Natural Resources Revenue
NOTICES
Major Portion Prices and Due Date:
Additional Royalty Payments on Gas Produced from Indian Lands in Designated Areas That are Not Associated with an Index Zone, 18072

Personnel Management Office
NOTICES
Migration to a New Financial System, 18082

Pipeline and Hazardous Materials Safety Administration
NOTICES
Hazardous Materials:
Actions on Special Permits, 18118–18120
Applications for Modifications to Special Permit, 18121
Applications for New Special Permits, 18120–18121
Meetings:
Pipeline Safety: Pipeline Leak Detection, Leak Repair, and Methane Emission Reductions, 18117–18118

Presidential Documents
PROCLAMATIONS
Special Observances:
Days of Remembrance of Victims of the Holocaust (Proc. 10173), 18165–18168
Honoring U.S. Capitol Police Officers (Proc. 10174), 18169
World Autism Awareness Day (Proc. 10172), 17893–17894
EXECUTIVE ORDERS
International Criminal Court; Termination of Emergency (EO 14022), 17895–17896

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
Cboe BZX Exchange, Inc., 18099–18105
Cboe Exchange, Inc., 18090–18095
ICE Clear Credit, LLC, 18087–18090
MEMX, LLC, 18082–18084
Nasdaq BX, Inc., 18095–18099
Nasdaq PHLX, LLC, 18105–18109
New York Stock Exchange, LLC, 18084–18087

Small Business Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18109–18110
Major Disaster Declaration:
Kentucky; Public Assistance Only, 18109

State Department
NOTICES
Charter Renewal:
Title VIII Advisory Committee, 18110
Sanctions Actions, 18110–18111

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Maritime Administration
See Pipeline and Hazardous Materials Safety Administration

Treasury Department
See Comptroller of the Currency

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Qualitative Feedback through Focus Groups, 18069–18070

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certification of Training Hours, Wages, and Progress, 18122

Separate Parts In This Issue

Part II
Federal Communications Commission, 18124–18163

Part III
Presidential Documents, 18165–18169

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

10172.....17893
10173.....18167
10174.....18169

Executive Orders:

14022.....17895

12 CFR

1024.....17897

14 CFR

39 (3 documents) 17899, 17902, 17905

Proposed Rules:

39 (3 documents) 17993, 17995, 17998

40 CFR

180 (4 documents) 17907, 17910, 17914, 17917

47 CFR

1 (2 documents) 17920, 18124
2.....17920
27.....17920
54.....18124

Proposed Rules:

1.....18000
27.....18000

50 CFR

17.....17956

Proposed Rules

17.....18014

Federal Register
Vol. 86, No. 65
Wednesday, April 7, 2021

Presidential Documents

Title 3—

The President

Proclamation 10172 of April 1, 2021

World Autism Awareness Day, 2021

By the President of the United States of America

A Proclamation

On World Autism Awareness Day, we celebrate the countless ways that people with autism contribute to our families, our communities, our Nation, and the world, and we shine a light on the systemic barriers people with autism face in their daily lives.

More than 2 percent of American adults and 1 in every 54 of our children have autism—a community of millions who deserve to live full lives of dignity and respect. My Administration is committed to funding cutting-edge research to help us to better understand autism and related health conditions in order to improve quality of life for people with autism and their families in every community.

Recent Government initiatives have focused on detecting autism in the first year of life, funding new national research networks to improve our knowledge of autism, and advancing services and support to help Americans with autism live independently in their communities. A recent apprenticeship initiative from the Department of Labor seeks to open up career pathways for people with autism and other developmental disabilities in thriving fields like information technology and health care. Investments like these and others that we continue to pursue are critical to expanding possibilities and improving life for all people with autism.

Meanwhile, agencies across the Federal Government are working to protect the rights of all people with disabilities—including people with autism—while also advancing equity when it comes to accessing vital services and supports. Our research agencies are working to reduce barriers in access to early diagnoses, interventions, and services for people with autism—including those from diverse racial, ethnic, and cultural backgrounds and rural communities—and to incorporate the perspectives of individuals with autism in scientific research. For too long, disparities in access to health care, education, and services have placed an undue burden on individuals with disabilities and their loved ones, particularly those from underserved communities. My Administration is committed to addressing these inequities in partnership with the Interagency Autism Coordinating Committee and the National Autism Coordinator of the Department of Health and Human Services.

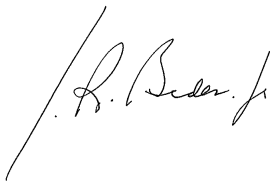
We also recognize that the COVID–19 pandemic has caused unique disruptions to, and placed new strains on, the lives of individuals with autism and their families. All Americans should be grateful for the creativity and dedication of educators, health care providers, and others who have rapidly adapted to the limitations of the pandemic by offering virtual learning, telehealth appointments, and other remote services. My Administration is working tirelessly to get America vaccinated, get our children safely back in school, and deliver direct economic relief to families across the country in order to end this year of disruption and alleviate as much of the burden as possible. In addition, agencies including the Centers for Disease Control and Prevention, the National Institutes of Health, and the Department of Education are hard at work developing data-driven guidance to help people

with disabilities and their families mitigate the far-reaching effects of the pandemic.

Today, we honor those with autism and recommit ourselves to providing them and their families with the investment, support, and care they need to live independently, fully participate in their communities, and live fulfilling lives of dignity and opportunity.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., 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 April 2, 2021, as World Autism Awareness Day. I call upon all Americans to learn more about autism to improve early diagnosis, to learn more about the experiences of autistic people from autistic people, and to build more welcoming and inclusive communities to support people with autism.

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



[FR Doc. 2021–07238
Filed 4–6–21; 8:45 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 14022 of April 1, 2021

Termination of Emergency With Respect to the International Criminal Court

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, JOSEPH R. BIDEN JR., President of the United States of America, find that, although the United States continues to object to the International Criminal Court's (ICC) assertions of jurisdiction over personnel of such non-States Parties as the United States and its allies absent their consent or referral by the United Nations Security Council and will vigorously protect current and former United States personnel from any attempts to exercise such jurisdiction, the threat and imposition of financial sanctions against the Court, its personnel, and those who assist it are not an effective or appropriate strategy for addressing the United States' concerns with the ICC.

Accordingly, I hereby terminate the national emergency declared in Executive Order 13928 of June 11, 2020 (Blocking Property of Certain Persons Associated With the International Criminal Court), and revoke that order, and further order:

Section 1. In light of the revocation of Executive Order 13928, the suspension of entry as immigrants and nonimmigrants of individuals meeting the criteria set forth in section 1(a) of that order will no longer be in effect as of the date of this order and such individuals will no longer be treated as persons covered by Presidential Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 2. Pursuant to section 202(a) of the NEA (50 U.S.C. 1622(a)), termination of the national emergency declared in Executive Order 13928 shall not affect any action taken or proceeding pending not finally concluded or determined as of the date of this order, any action or proceeding based on any act committed prior to the date of this order, or any rights or duties that matured or penalties that were incurred prior to the date of this order.

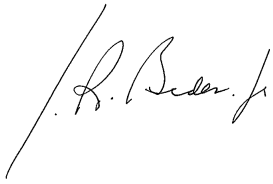
Sec. 3. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
April 1, 2021.

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Rules and Regulations

Federal Register

Vol. 86, No. 65

Wednesday, April 7, 2021

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

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1024

Bulletin 2021–02: Supervision and Enforcement Priorities Regarding Housing Insecurity

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Compliance bulletin and policy guidance.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this Compliance Bulletin and Policy Guidance (Bulletin) on Supervision and Enforcement priorities regarding housing insecurity in light of heightened risks to consumers needing loss mitigation assistance in the coming months as the COVID–19 foreclosure moratoriums and forbearances end. Consequently, the Bureau will be paying particular attention to how mortgage servicers respond to borrower requests for loss mitigation assistance and process loss mitigation applications. The Bureau urges servicers to dedicate sufficient resources and staff to ensure they can communicate clearly with borrowers, effectively manage borrower requests for assistance, promote loss mitigation, and ultimately reduce avoidable foreclosures and foreclosure-related costs. Accordingly, the Bureau intends to consider a servicer's overall effectiveness at achieving such goals, along with other relevant factors, in using its discretion to address violations of Federal consumer financial law in supervisory and enforcement matters. The Bureau recognizes that some homeowners will not be able to resume making payments on their mortgages and that some foreclosures are unavoidable; nonetheless, the Bureau will hold mortgage servicers accountable for complying with Regulation X with the aim of ensuring that homeowners have the opportunity to be evaluated for loss mitigation prior to the initiation of foreclosure.

DATES: This bulletin is applicable on April 7, 2021.

FOR FURTHER INFORMATION CONTACT: Allison Brown, Deputy Assistant Director, Office of Supervision Policy, Division of Supervision, Enforcement, and Fair Lending, at (202) 435–7107, or James Savage, Senior Counsel, Office of Enforcement, at (202) 734–2777. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Mortgage servicers play a vital role in assisting borrowers when they face challenges in paying their mortgages. The Bureau is committed to using its authorities, including its authority under Regulation X mortgage servicing requirements and under the Consumer Financial Protection Act (CFPA), to ensure that homeowners facing the ongoing economic impact of the Coronavirus Disease (COVID–19) national emergency receive the benefits of critical legal protections and that avoidable foreclosures are avoided.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law.[1] Among other things, the CARES Act provides borrowers with ''Federally backed mortgage loans'' with access to forbearance options regardless of whether they are delinquent.[2] The Bureau understands from its market monitoring that many private investors have also provided forbearances on similar terms to those provided by servicers of federally backed loans.

Since the CARES Act was enacted, 6.9 million borrowers have entered a forbearance program. As of January 2021, more than 2.1 million borrowers in forbearance programs were more than 90 days behind on their mortgage payments (including borrowers who have forborne three or more payments), and they could still be experiencing severe hardships when their payments are to resume.[3] Black and Hispanic homeowners were more than two times as likely to be behind on housing payments as of December 2020.[4]

Of the borrowers not in forbearance programs, as of January 2021, around 242,000 were 90 days or more delinquent. Both populations of delinquent borrowers are at heightened risk of referral to foreclosure soon after the foreclosure moratoria end if they do not resolve their delinquency or reach a loss mitigation agreement with their servicer. If borrowers who are currently in an eligible forbearance program request an extension to the maximum time offered by the government agencies, those loans that were placed in a forbearance program early in the pandemic (March and April 2020) will reach the end of their forbearance period in September and October of 2021. Black Knight data suggests there could be just under 1.7 million borrowers still in forbearance in September 2021, with roughly 800,000 borrowers exiting their forbearance programs after 18 months of forborne payments in September and October of 2021.[5]

Borrowers facing more permanent hardships will likely need to apply for loss mitigation options as the end of the forbearances periods approach.[6]

[1] Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136, 134 Stat. 281 (Mar. 27, 2020).

[2] The CARES Act defines a ''Federally backed mortgage loan'' as any loan which is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one-to-four families that is insured by the Federal Housing Administration under title II of the National Housing Act (12 U.S.C. 1707 *et seq.*); insured under section 255 of the National Housing Act (12 U.S.C. 1715z–20); guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a, 1715z–13b); guaranteed or insured by the Department of Veterans Affairs; guaranteed or insured by the Department of Agriculture; made by the Department of Agriculture; or purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. CARES Act, Public Law 116–136, section 4022(a)(2).

[3] Bureau of Consumer Fin. Prot., *Housing insecurity and the COVID–19 pandemic* (March 2021), *https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf.*

[4] *Id.*

[5] Black Knight Mortg. Monitor, January 2021 Report at 9 (Jan. 2021), *https://cdn.blackknightinc.com/wp-content/uploads/2021/03/BKI_MM_Jan2021_Report.pdf* (Black Jan. 2021 Report). It is unclear how many borrowers in a forbearance program will exit forbearance at 12 months rather than exercising any additional extensions.

[6] Mortgage Market COVID 19 Collaborative: Forbearance and Delinquency Among Agency Mortgage Loans, Housing Finance Policy Center, Urban Institute (March 2021).

Therefore, as consumers approach the end of forbearance periods in the coming months, the Bureau expects an extraordinarily high volume of loans needing loss mitigation assistance at relatively the same time. During this period in which there may be large increases in requests for loss mitigation assistance, the Bureau is specifically concerned that some borrowers may not be receiving effective communication from servicers and that some borrowers may be at risk of not having their loss mitigation applications adequately processed.

In the wake of the COVID–19 pandemic, the Bureau has taken numerous steps to protect and assist mortgage borrowers. The Bureau has created and disseminated extensive consumer education resources in coordination with Federal agencies and State regulators. The Bureau plans to use all of its tools, including consumer and industry outreach and regulatory initiatives, to protect homeowners and assist those mortgage servicers who are also working to reduce avoidable foreclosures. The Bureau recognizes that mortgage servicers have also experienced challenges as a result of the pandemic and intends to support servicers in their efforts to provide timely assistance to mortgage borrowers.

II. Supervision and Enforcement Priorities

The Bureau plans to monitor servicers' engagement with borrowers at all stages in the process in the coming months and prioritize mortgage servicing oversight work in deploying its enforcement and supervision resources in the coming year. The Bureau expects servicers to plan for the expected increase in loans exiting forbearance programs and related loss mitigation applications, as well as applications by borrowers who are delinquent but not in forbearance. The Bureau expects servicers to resource those activities appropriately and urges servicers to dedicate sufficient resources and staff to ensure they can communicate clearly with borrowers, effectively manage borrower requests for assistance, and thereby reduce foreclosures. Accordingly, the Bureau intends to look at a servicer's overall effectiveness at helping consumers manage loss mitigation, along with other relevant factors, when using its discretion to address violations of Federal consumer financial law in supervisory and enforcement matters. On the other hand, consistent with the flexibilities announced in the April 3, 2020 joint statement, companies that are unable to adequately manage loss mitigation can expect the Bureau to take enforcement or supervisory action to address violations under its Regulation X, CFPA, or other authorities.[7]

In its oversight work, the Bureau plans to pay particular attention to:

1. Whether servicers are providing clear and readily understandable information to borrowers about their options for payment assistance;

2. Whether servicers are complying with the outreach requirements in Regulation X to ensure that borrowers are getting needed information about loss mitigation options, including:

- For borrowers who request further assistance, whether servicers are promptly resuming reasonable diligence in obtaining documents and information to complete loss mitigation applications;[7]
- For borrowers in forbearance, whether servicers are contacting borrowers before the end of the forbearance period to determine if the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation application;[8]

3. Whether servicers are complying with the Equal Credit Opportunity Act's (ECOA's) prohibition against discriminating against any applicant, with respect to any aspect of a credit transaction, including:[9]

- Whether servicers are managing communications with limited English proficiency borrowers while maintaining compliance with applicable laws;[10]
- For applicants who are recipients of income derived from part-time employment, alimony, child support, separate maintenance payments, retirement benefits, or public assistance, whether servicers evaluate such income in accordance with the ECOA and Regulation B when determining eligibility for loss mitigation options, to the extent the servicer is otherwise required to use income in determining eligibility for loss mitigation options;[11]

4. Whether servicers promptly handle loss mitigation inquiries and avoid unreasonably long hold times on phone lines; for example, the Bureau plans to scrutinize servicer conduct where hold times are significantly longer than industry averages;

5. Whether servicers maintain policies and procedures that are reasonably designed to achieve the continuity of contact objectives to ensure that delinquent borrowers receive accurate information about their loss mitigation options;[12]

6. For borrowers who submit complete loss mitigation applications, whether servicers evaluate the applications consistent with the Regulation X requirements to promote timely and consistent evaluations;[13]

7. Whether servicers comply with foreclosure restrictions in Regulation X and other Federal or State foreclosure restrictions;[14] and

8. Whether servicers are complying with the Fair Credit Reporting Act's requirements to report the credit obligation or account appropriately.[15]

IV. Conclusion

The Bureau issues this policy statement to highlight supervisory and enforcement priorities with respect to mortgage servicing and to confirm that

[7] See Bureau of Consumer Fin. Prot., Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID–19 Emergency and the CARES Act, *available at https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_mortgage-servicing-rules-covid-19.pdf.*

[7] *See* Regulation X, 12 CFR 1024.41(c)(2)(iii); comments 41(b)(1)–4.iii; 41(c)(2)(i)–1; 41(c)(2)(iii)–1 through –6.

[8] *See* Regulation X, comment 41(b)(1)–4.iii.

[9] 15 U.S.C. 1691(a). The ECOA prohibits discrimination based on race or color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), because all or part of the applicant's income derives from any public assistance program, and because the applicant has in good faith exercised any right under the Consumer Credit Protection Act (Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.*).

[10] *See* Bureau of Consumer Financial Protection, ''Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency,'' 86 FR 6306 (Jan. 21, 2021) (encouraging financial institutions to better serve LEP consumers in languages other than English and providing key considerations and guidelines financial institutions can use to develop related compliance solutions).

[11] For example, the ECOA and Regulation B prohibit creditors from automatically discounting or excluding from consideration the public assistance income of an applicant or the spouse of an applicant. *See* 15 U.S.C. 1691(b)(2), 12 CFR 1002.6(b)(5); 12 CFR part 1002, supp. I, ¶ 6(b)(5)–(3)(ii); *see id.* at 6(b)(5)–(1) (''A creditor must evaluate income derived from . . . public assistance on an individual basis . . . .''); *see also* Consumer Financial Protection Bureau, *Supervisory Highlights,* Summer 2020, *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-22_2020-09.pdf.*

[12] *See* Regulation X, 12 CFR 1024.40; *see also* 12 CFR 1024.38(b)(2)(i) (requiring policies and procedures reasonably designed to ensure that the servicer can provide accurate information regarding loss mitigation options available to a borrower from the owner or assignee of the borrower's mortgage loan); 12 CFR 1024.38(b)(2)(ii) (requiring policies and procedures reasonably designed to ensure that the servicer can identify with specificity all loss mitigation options for which borrowers may be eligible pursuant to any requirements established by an owner or assignee of the borrower's mortgage loan).

[13] *See* Regulation X, 12 CFR 1024.41.

[14] *See* Regulation X, 12 CFR 1024.41(f) and (g).

[15] CARES Act, Public Law 116–136, sec. 4021 (2020) (amending section 623(a)(1) of the FCRA).

the Bureau will hold servicers accountable if they are unable to manage an expected increase in borrowers needing loss mitigation assistance.

V. Regulatory Requirements

The Bulletin constitutes a general statement of policy exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act (APA). It is intended to provide information regarding the Bureau's general plans to exercise its supervisory and enforcement discretion for institutions under its jurisdiction and does not impose any legal requirements on external parties, nor does it create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceeding. Because no notice of proposed rulemaking is required in issuing the Bulletin, the Regulatory Flexibility Act also does not require an initial or final regulatory flexibility analysis. The Bureau has also determined that the issuance of the Bulletin does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.

Dated: March 31, 2021.

David Uejio,

Acting Director, Bureau of Consumer Financial Protection.

[FR Doc. 2021–07098 Filed 4–6–21; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0848; Product Identifier 2020–NM–088–AD; Amendment 39–21486; AD 2021–07–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2007–07–03, which applied to certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. AD 2007–07–03 required repetitive tests to detect hot air leaking from the trim air diffuser ducts or sidewall riser duct assemblies (collectively referred to as TADDs), related investigative actions, and corrective actions if necessary. AD 2007–07–03 also provided an optional terminating action for the repetitive tests. This AD requires repetitive inspections of all TADD material for damage and applicable on-condition actions. This AD was prompted by reports that high temperature composite material TADDs installed as specified in AD 2007–07–03 have also failed. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 12, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 12, 2021.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0848.

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–2020–0848; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Nicole S. Tsang, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3959; email: *nicole.s.tsang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2007–07–03, Amendment 39–15003 (72 FR 14395, March 28, 2007) (AD 2007–07–03). AD 2007–07–03 applied to certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. The NPRM published in the **Federal Register** on September 22, 2020 (85 FR 59451). The NPRM was prompted by reports of sealant deteriorating on the outside of the center wing fuel tank and analysis showing that sealant may deteriorate inside the tank due to excess heat from TADDs. The NPRM was also prompted by reports indicating that the high temperature composite material TADDs installed as specified in AD 2007–07–03 have also failed. The NPRM proposed to require repetitive inspections of all TADD material for damage and applicable on-condition actions. The FAA is issuing this AD to address potential hot air leakage from original fiberglass fabric material or high temperature composite material TADDs that can cause damage to the center wing fuel tank secondary fuel barrier coating and primary sealant, which can cause fuel leakage into an ignition zone, possibly resulting in a fire or explosion.

Comments

The FAA gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

Air Line Pilots Association, International (ALPA), Boeing, and Jesse Addo expressed support for the NPRM.

Requests To Extend Compliance Times for Initial and Repetitive Inspections

Cathay Pacific Airways Limited (CPA), Lufthansa German Airlines (Lufthansa), and SFN requested that the compliance time for the initial and repetitive inspection be extended. Lufthansa suggested that an interval of 11,000 flight hour (FH) would still provide a sufficient level of safety based on its fleet reliability data. Lufthansa stated that the proposed interval is not comprehensible based on its data and would result in an extension of each A-check by 200 percent of normal and generate a very high economic impact. SFN agreed with Lufthansa's analysis and requested an interval of 10,000 FH to coincide with the C-check, because doing the inspection at the 1,200 FH

interval would require the inspection be done at each A-check (1,000 FH). SFN comments that this would be problematic for two reasons: It would generate a very high economic impact, and it would result in a higher frequency of floor panel removal/installation that would increase the risk of wire damage over the center fuel tank. CPA requested that the compliance time for the initial inspection be extended. CPA asserted that the replacement of the TADDs at the initial inspection, to extend the next inspection to 16,000 FH, would not be possible due to availability of spare TADDs and base maintenance scheduling. CPA also noted that the 1,200 FH repetitive inspection interval will impose a huge burden on essential cargo operations. The commenters noted that the inspections were not suitable for the line maintenance environment due to the extensive access portion of the inspection.

The FAA disagrees with the requests. In developing an appropriate compliance time, the FAA considered the safety implications, parts availability, normal maintenance schedules, and the manufacturer's recommendations, and determined that the 1,200 FH compliance time would allow for an adequate level of safety. After initial installation of high temperature TADDs, operators may avoid repeat inspections at 1,200 FH intervals by installing new high temperature TADDs at each 16,000 FH interval, without an alternative method of compliance (AMOC) or additional rulemaking, as long as required actions are completed at that interval. However, under the provisions of paragraph (h) of this AD, the FAA will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the extension would provide an acceptable level of safety. Additionally, as noted in the NPRM, the FAA considers this AD interim action. The manufacturer is currently developing a modification. Once the modification is developed, approved, and available, the FAA might consider additional rulemaking. We have not changed this AD with regard to this request.

Request To Allow AMOC for Access and Inspection

KLM Royal Dutch Airlines (KLM) requested that the NPRM be revised to allow an AMOC to use holes at certain locations in the floor for access and a borescope for the inspection. KLM outlined a method for accessing the inspection area more quickly and with less disruption using borescopes and examination holes in the floor panels, if Boeing modified the panels. KLM noted that currently more than 38 work hours are required to remove and replace floor panels—a huge effort for a 5-hour inspection that is repeated frequently. KLM recalled that a similar inspection using access holes and borescopes was used in the 1980s to inspect the floors under toilets.

The FAA disagrees with the need for an alternate inspection method. Note that this AD does not mandate how to access the inspection site, it only mandates a detailed inspection of the affected parts. However, the FAA is not aware of Boeing developing any new design for the floor panels that includes pluggable holes. As noted, this AD is considered interim action and if any new design is developed, the FAA might consider further rulemaking. This AD has not been changed with regard to this request.

Request To Simplify Language in NPRM

One commenter requested that the NPRM be written in language more understandable to the average person to help clarify the unsafe condition. The commenter stated that the **SUMMARY** section may be unclear and confusing and argued that it is the FAA's duty to present the issues pertaining to TADDs in a more comprehensible way in order to emphasize the importance and urgency of the identified unsafe condition. The commenter asserted that the FAA does not clearly explain why hot air leakage from the TADDs as a result of hot trim air causing the material properties to degrade is potentially dangerous or creates an unsafe condition. Therefore, the commenter stated that the FAA should describe in more detail the dangers and unsafe conditions the TADDs, especially the high temperature composite material TADDs, present. The commenter further argued that the FAA should better break down the focal component of the proposed and former rules, which is the TADD, and do it while making the terms and concepts understandable to the layperson.

The FAA disagrees with changing the nature of the language in this final rule. The FAA strives to follow guidelines as outlined in FAA Order 1000.36, FAA Writing Standards,[1] as well as using plain language principles[2] to draft regulations, but a certain level of subject matter knowledge is assumed on the part of the reader. As noted by the commenter, ADs are written for the owners and operators of the affected airplanes, for the purpose of increasing aviation safety. Therefore, it is important that the content of an AD is written for the understanding of those individuals required to comply with the requirements of the AD.

It is also important to note that information that is appropriate for inclusion in the **SUMMARY** section of a rule is driven by the Office of the Federal Register (OFR).[3] Additional detail may not be added to the **SUMMARY**. Additional detail in the Discussion is also unnecessary. The unsafe condition was clearly stated in the proposed AD to be damage to the center wing fuel tank secondary fuel barrier coating and primary sealant, which can cause fuel leakage into an ignition zone, possibly resulting in a fire or explosion—caused by potential hot air leakage from original fiberglass fabric material or high temperature composite material TADDs.

We have not changed this AD in this regard.

Request To Clarify Necessity for Supersedure of AD 2007–07–03

A commenter also requested that the NPRM be revised to clearly state why it is necessary to supersede AD 2007–07–03, given the high labor costs of performing the newly required actions.

The FAA agrees to clarify the need to supersede AD 2007–07–03. The FAA issues ADs, including any necessary supersedures, whenever there is an unsafe condition that must be addressed. As described under the section, ''Actions Since AD 2007–07–03 Was Issued,'' operators reported that high temperature composite material TADDs installed as specified in AD 2007–07–03 have also failed. Further inspection showed that the high temperature composite material TADDs were ruptured, with damaged insulation in poor condition. Analysis showed that hot trim air was causing material properties degradation of both the original fiberglass fabric material and high temperature composite material TADDs, which potentially causes hot air leakage from the TADD(s). Since the unsafe condition has been reported even with AD 2007–07–03 in effect, the FAA has determined that it is necessary to issue this AD, which supersedes AD 2007–07–03, to adequately address

[1] FAA Order 1000.36, FAA Writing Standards, dated March 31, 2003 (*https://rgl.faa.gov/Regulatory_and_Guidance_Library/rgOrders.nsf/0/880c01691d0546c386256cfc005ec613/$FILE/Order_1000.36.pdf*).

[2] Plain Writing Act of 2010 (*https://www.plainlanguage.gov/*).

[3] This information may be found in the OFR's Document Drafting Handbook (*https://www.archives.gov/files/federal-register/write/handbook/ddh.pdf*).

possible hot air leaks that can damage the secondary fuel barrier of the center wing fuel tank. As noted in this final rule, a damaged fuel barrier could allow fuel to leak into an area where it may cause a fire or explosion. The FAA has not changed this AD with regard to this request.

Conclusion

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

• Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747–21A2577 RB, dated February 18, 2020. The service information describes procedures for repetitive detailed inspections of TADDs made of original fiberglass fabric material and high temperature composite material for damage and applicable on-condition actions. On-condition actions include TADD replacement, detailed inspection of the center wing tank secondary fuel barrier and the center wing tank primary sealant for damage, a measurement of the electrical conductivity change of the upper skin of the center wing tank for indications of damage, other replacement as applicable, and repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

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.

Costs of Compliance

The FAA estimates that this AD affects 188 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive inspections ...	Up to 44 work-hours × $85 per hour = Up to $3,740 per inspection cycle.	$0	Up to $3,740 per inspection cycle.	Up to $703,120 per inspection cycle.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2007–07–03, Amendment 39–15003 (72 FR 14395, March 28, 2007), and

■ b. Adding the following new AD:

2021–07–09 The Boeing Company: Amendment 39–21486; Docket No. FAA–2020–0848; Product Identifier 2020–NM–088–AD.

(a) Effective Date

This airworthiness directive (AD) is effective May 12, 2021.

(b) Affected ADs

This AD replaces AD 2007–07–03, Amendment 39–15003 (72 FR 14395, March 28, 2007).

(c) Applicability

This AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 21, Air conditioning.

(e) Unsafe Condition

This AD was prompted by reports of sealant deteriorating on the outside of the center wing fuel tank and analysis showing that sealant may deteriorate inside the tank due to excess heat from leaking trim air diffuser ducts or sidewall riser duct assemblies (collectively referred to as TADDs). This AD was also prompted by reports indicating that the high temperature composite material TADDs installed as

specified in AD 2007–07–03 have also failed. The FAA is issuing this AD to address potential hot air leakage from original fiberglass fabric material or high temperature composite material TADDs that can cause damage to the center wing fuel tank secondary fuel barrier coating and primary sealant, which can cause fuel leakage into an ignition zone, possibly resulting in a fire or explosion.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance,'' paragraph of Boeing Alert Requirements Bulletin 747–21A2577 RB, dated February 18, 2020, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–21A2577 RB, dated February 18, 2020.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–21A2577, dated February 18, 2020, which is referred to in Boeing Alert Requirements Bulletin 747–21A2577 RB, dated February 18, 2020.

(h) Exceptions to Service Information Specifications

(1) Where Boeing Alert Requirements Bulletin 747–21A2577 RB, dated February 18, 2020, uses the phrase ''the original issue date of Requirements Bulletin 747–21A2577 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 747–21A2577 RB, dated February 18, 2020, specifies contacting Boeing for repair instructions: This AD requires doing the repair before further flight using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install an original fiberglass fabric material TADD assembly, having a part number listed in Appendix A of Boeing Alert Requirements Bulletin 747–21A2577 RB, dated February 18, 2020, on any airplane.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(k) Related Information

(1) For more information about this AD, contact Nicole S. Tsang, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3959; email: *nicole.s.tsang@faa.gov.*

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

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 747–21A2577 RB, dated February 18, 2020.

(ii) [Reserved]

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

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

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

Issued on March 22, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–07034 Filed 4–6–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0915; Project Identifier AD–2020–00661–Q; Amendment 39–21501; AD 2021–08–07]

RIN 2120–AA64

Airworthiness Directives; Rockwell Collins, Inc., Global Positioning Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Rockwell Collins, Inc. (Rockwell Collins), GPS–4000S Global Positioning Systems (GPS) installed on airplanes. This AD was prompted by an un-annunciated GPS position error, which could cause a misleading localizer performance with vertical guidance (LPV) glidepath, resulting in controlled flight into terrain (CFIT). This AD requires upgrading the GPS–4000S. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 12, 2021.

ADDRESSES: For service information identified in this final rule, contact Rockwell Collins, Inc., 400 Collins Road NE, Cedar Rapids, IA 52498; phone: (319) 295–5000; email: *customersupport@rockwellcollins.com;* website: *www.rockwellcollins.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0915; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Paul Rau, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Wichita, KS 67209; phone: (316) 946–4149; fax: (316) 946–4107; email:

paul.rau@faa.gov or *Wichita-COS@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Rockwell Collins GPS–4000S GPS installed on airplanes. The NPRM published in the **Federal Register** on October 29, 2020 (85 FR 68501). The NPRM was prompted by the FAA being notified of a software error in GPS P/N 822–2189–100 that can result in an un-annunciated inaccurate GPS position in the region within approximately 1,000 miles (+/ − 20 degrees) of 180 degrees west longitude. The software improperly applies the wide area augmentation system ionospheric delay corrections to the GPS signal from satellites located across the 180th meridian. Due to this anomaly, the position accuracy may be diminished such that the GPS–4000S P/N 822–2189–100 will not support LPV approaches in the affected region. In the NPRM, the FAA proposed to require removing P/N 822–2189–100 GPS–4000S GPS from the airplane and installing P/N 811–2189–101 GPS–4000S GPS. The FAA is issuing this AD to prevent a misleading glidepath on an affected LPV approach, resulting in CFIT.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from five commenters. The commenters were the Air Line Pilots Association, International (ALPA), Bombardier Aviation (Bombardier), Delta Air Lines, Inc. (Delta), Airbus Canada, and Transport Canada Civil Aviation (Transport Canada). The following presents the comments received on the NPRM and the FAA's response to each comment.

Supportive Comment

ALPA supported the AD without change.

Request Regarding the Unsafe Condition

Bombardier requested the FAA clarify paragraph (e) because it does not describe the unsafe condition accurately. Bombardier stated that the reference to a GPS vertical error is misleading and recommended rewording it to state that a GPS software anomaly causes an undetectable and inaccurate horizontal position from the Global Navigation Satellite System (GNSS).

The FAA disagrees. The software error in the GPS–4000 produces both horizontal and vertical position inaccuracies in the affected region. The FAA determined the vertical error results in an unsafe condition as it could cause the airplane to follow a glidepath below the obstacle clearance surface of the LPV approach.

Request Regarding Replacement of the GPS–4000S

Delta requested the FAA change the proposed requirement in paragraph (g)(1) to replace GPS–4000S P/N 822–2189–100 so that the AD does not prevent installation of a GPS P/N that is unaffected by the unsafe condition. Delta stated GPS–4000S P/N 822–2189–011 is two-way interchangeable with P/N 822–2189–100 as a set and is not affected by the unsafe condition. Delta also stated that Rockwell Collins could develop new GPS P/Ns that are not subject to the unsafe condition, which operators could not install without obtaining approval for an alternative method of compliance (AMOC), based on the proposed paragraph (g)(1). Delta requested the FAA change paragraph (g)(1) to require replacing GPS–4000S GPS P/N 822–2189–100 with ''an improved part number.''

The FAA agrees. It is not necessary for the AD to require installing P/N 822–2189–101 because requiring the removal of P/N 822–2189–100 will resolve the unsafe condition. Operators may replace GPS P/N 822–2189–100 with any other system approved for installation in their aircraft, although the FAA expects installation of P/N 822–2189–101 will be the most common method.

The FAA has revised the AD to only require removing GPS–4000S GPS P/N 822–2189–100 from service without requiring replacement with a specific P/N GPS.

Requests Regarding Installation Prohibition

Airbus Canada and Transport Canada commented on the FAA's proposal to prohibit the installation of the GPS–4000S GPS P/N 822–2189–100 as of the effective date of the AD instead of once P/N 822–2189–101 has been installed. The commenters stated that this may create dispatch issues for operators depending on the number of available parts.

The FAA agrees and has changed the prohibition of installation to take effect 24 months after the effective date of the AD. Operators may install a GPS–4000S GPS P/N 822–2189–100 to address maintenance/repair issues prior to complying with the AD. Once an operator has removed GPS–4000S GPS P/N 822–2189–100 to comply with the AD, the operator must maintain that configuration and may not change it to install a GPS–4000S GPS P/N 822–2189–100 without an approved AMOC.

Request Regarding Applicability

Delta requested the FAA change the applicability to specify only those aircraft types with the affected software installed. Delta stated that as proposed, the AD would require all operators to review records to verify whether the affected GPS P/N is installed on all of their airplane fleets, regardless of whether it is type certificated or supplemental type certificated.

The FAA disagrees. The FAA issues an AD against an appliance when, as in this case, the unsafe condition exists in the appliance. If known, the FAA will list the aircraft models that the appliance might be installed on. However, this would not be an all-inclusive list and would still require all operators to check their airplanes for the affected appliance, regardless of whether the model of their airplane is listed.

The FAA did not change this AD based on this comment.

Requests Regarding Reinstatement of LPV Approaches

Airbus Canada stated that the NPRM does not mention that Rockwell Collins removed the LPV approaches from the impacted airports. Airbus Canada requested that the AD provide credit for this. Transport Canada asked whether Rockwell Collins and the FAA will return the affected Alaska LPV procedures to the Navigation database for customers who have updated their entire fleet with the P/N 822–2189–101 version of the GPS–4000S.

The FAA disagrees with this comment. The FAA infers that the commenters are referencing Rockwell Collins' removal of the affected LPV approaches from the Rockwell Collins Navigation database beginning in February 2020. This LPV approach removal was initiated by Rockwell Collins as a temporary mitigation, but it affects all versions of the GPS–4000S that use the database, including those (such as the –101 version) that do not have the unsafe condition. Accordingly, the FAA did not base its determination and the corrective actions of this AD on the removal of affected LPV approaches.

The FAA did not change this AD based on this comment.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for the changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information

The FAA reviewed Rockwell Collins Service Information Letter GPS–4X00( )–19–3, Revision No. 2, dated March 25, 2020. The service letter describes the unsafe condition and provides operating limitations for approaches to airports in the affected region until the software is upgraded.

The FAA also reviewed Rockwell Collins Service Bulletin GPS–4X00( )–34–510, Revision No. 1, dated March 6, 2020. The service bulletin specifies procedures for upgrading the GPS–4000S software, which removes P/N 822–2189–100 and installs P/N 822–2189–101.

Costs of Compliance

The FAA estimates that this AD affects 3,500 airplanes of U.S. registry. The FAA estimates that 2,000 airplanes have two GPS–4000S units installed and 1,500 airplanes have one GPS–4000S unit installed.

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
Replace GPS–4000S (airplanes with 2 units installed).	7 work-hours × $85 per hour = $595	$4,540.00	$5,135	$10,270,000
Replace GPS–4000S (airplanes with single unit installed).	3.50 work-hours × $85 per hour = $297.50 ...	2,270	2,567.50	3,851,250

The FAA has included all known costs in this cost estimate. According to the manufacturer, however, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

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:

2021–08–07 Rockwell Collins, Inc.: Amendment 39–21501; Docket No. FAA–2020–0915; Project Identifier AD–2020–00661–Q.

(a) Effective Date

This airworthiness directive (AD) is effective May 12, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rockwell Collins, Inc. GPS–4000S Global Positioning System (GPS) part number (P/N) 822–2189–100 installed on airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 3400, NAVIGATION SYSTEM.

(e) Unsafe Condition

This AD was prompted by an un-annunciated GPS vertical error that could result in a hazardously misleading localizer performance vertical (LPV) glidepath. The FAA is issuing this AD to prevent a misleading GPS position on an LPV approach. The unsafe condition, if not addressed, could result in a misleading GPS position on an LPV approach resulting in controlled flight into terrain.

(f) Compliance

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

(g) Actions

(1) Within 24 months replace each GPS–4000S GPS P/N 822–2189–100 with a GPS that does not have P/N 822–2189–100.

(2) As of 24 months after the effective date of this AD, do not install GPS–4000S GPS P/N 822–2189–100 on any airplane.

(h) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(i) Related Information

(1) For more information about this AD, contact Paul Rau, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Wichita, KS 67209; phone: (316) 946–4149; fax: (316) 946–4107; email: *paul.rau@faa.gov* or *Wichita-COS@faa.gov.*

(2) Rockwell Collins Service Information Letter GPS–4X00( )–19–3, Revision No. 2, dated March 25, 2020; and Rockwell Collins Service Bulletin GPS–4X00( )–34–510, Revision No. 1, dated March 6, 2020, contain information related to this AD. For this service information, you may contact Rockwell Collins, Inc., at 400 Collins Road NE, Cedar Rapids, IA 52498; phone: (319) 295–5000; email: *customersupport@rockwellcollins.com;* website: *www.rockwellcollins.com.*

Issued on March 30, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–07015 Filed 4–6–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1137; Project Identifier MCAI–2020–00816–T; Amendment 39–21487; AD 2021–07–10]

RIN 2120–AA64

Airworthiness Directives; MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), and CL–600–2D24 (Regional Jet Series 900) airplanes. This AD was prompted by a report that some piccolo ducts for the wing anti-ice system have bleed holes that do not conform to requirements. This AD requires, depending on airplane configuration, inspection for the presence of affected wing anti-ice system piccolo ducts and corrective actions, or replacement of affected piccolo ducts with new piccolo ducts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 12, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 12, 2021.

ADDRESSES: For service information identified in this final rule, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1 Canada; Widebody Customer Response Center North America toll-free telephone +1–844–272–2720 or direct-dial telephone +1–514–855–8500; fax +1–514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.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–2020–1137.

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–2020–1137; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Siddeeq Bacchus, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7362; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2020–23, dated June 24, 2020 (TCCA AD CF–2020–23) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), and CL–600–2D24 (Regional Jet Series 900) airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1137.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), and CL–600–2D24 (Regional Jet Series 900) airplanes. The NPRM published in the **Federal Register** on December 21, 2020 (85 FR 82975). The NPRM was prompted by a report that some piccolo ducts for the wing anti-ice system have bleed holes that do not conform to requirements (such as being undersized, un-burred, or in the wrong location). The NPRM proposed to require, depending on airplane configuration, inspection for the presence of affected wing anti-ice system piccolo ducts and corrective actions, or replacement of affected piccolo ducts with new piccolo ducts. The FAA is issuing this AD to address non-conforming piccolo duct bleed holes, which could lead to degradation of the wing anti-ice protection of the leading edge of certain slats, and possibly result in airplane handling issues during critical phases of flight. See the MCAI for additional background information.

Comments

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

Clarification of Reporting Requirement

Bombardier Service Bulletin 670BA–30–025, dated December 17, 2019, includes a requirement to report the pre- and post-modification part and serial number of each replaced piccolo duct to Bombardier. The FAA has added paragraph (h) of this AD to clarify the appropriate compliance time for this reporting and redesignated subsequent paragraphs accordingly. The FAA has also revised the Cost of Compliance portion of this AD to include the estimated costs for this reporting requirement.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. The FAA has determined that these minor changes:

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

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 670BA–30–025, dated December 17, 2019. This service information describes, for certain airplanes, procedures for replacement of affected piccolo ducts with new piccolo ducts. This service information also describes, for certain other airplanes, procedures for inspection for the presence of affected wing anti-icing system piccolo ducts, and depending on inspection results, replacement of affected piccolo ducts with new piccolo ducts or contacting the manufacturer for further instruction. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 21 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 16 work-hours × $85 per hour = Up to $1,360	Up to $7,534	Up to $8,894	Up to $186,774.

* Table does not include estimated costs for reporting.

The FAA estimates that it would take about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting on U.S. operators to be $1,785, or $85 per product.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–07–10 MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–21487; Docket No. FAA–2020–1137; Project Identifier MCAI–2020–00816–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 12, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to MHI RJ Aviation ULC airplanes identified in paragraphs (c)(1) and (2) of this AD, certificated in any category.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes and Model CL–600–2C11 (Regional Jet Series 550) airplanes having serial numbers (S/Ns) 10082, 10135, 10141, 10155, 10166, 10173, 10178, 10186, 10249, 10296, and 10327.

(2) Model CL–600–2D24 (Regional Jet Series 900) airplanes having S/Ns 15099,

15102, 15144, 15159, 15201, 15212, 15279, 15396, 15409 through 15413 inclusive, 15415, 15419 through 15427 inclusive, 15430, 15449, and 15453.

(d) Subject

Air Transport Association (ATA) of America Code 30, Ice and Rain Protection.

(e) Reason

This AD was prompted by a report that some piccolo ducts for the wing anti-ice system have bleed holes that do not conform to requirements (such as being undersized, un-burred, or in the wrong location). The FAA is issuing this AD to address non-conforming piccolo duct bleed holes, which could lead to degradation of the wing anti-ice protection of the leading edge of certain slats, and possibly result in airplane handling issues during critical phases of flight.

(f) Compliance

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

(g) Inspection and Corrective Action

Within 8,800 flight hours after the effective date of this AD, inspect for the presence of affected piccolo duct assemblies, as applicable, and replace each affected piccolo duct with a new piccolo duct, as applicable, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–30–025, dated December 17, 2019.

(h) Reporting

At the applicable time specified in paragraph (h)(1) or (2) of this AD: Report the piccolo duct part and serial numbers before and after the modification required by paragraph (g) of this AD to Bombardier in accordance with the instructions of Bombardier Service Bulletin 670BA–30–025, dated December 17, 2019.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or MHI RJ Aviation ULC's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2020–23, dated June 24, 2020, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1137.

(2) For more information about this AD, contact Siddeeq Bacchus, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7362; email *9-avs-nyaco-cos@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 670BA–30–025, dated December 17, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1 Canada; Widebody Customer Response Center North America toll-free telephone +1–844–272–2720 or direct-dial telephone +1–514–855–8500; fax +1–514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.com.*

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

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

Issued on March 23, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–07013 Filed 4–6–21; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0526; FRL–10020–24]

Spinetoram; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of spinetoram in or on multiple commodities that are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 7, 2021. Objections and requests for hearings must be received on or before June 7, 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–2019–0526, 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: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0526 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 June 7, 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–2019–0526, 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 February 11, 2020 (85 FR 7708) (FRL–10005–02), 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 9E8778) by IR–4, IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide spinetoram, including its metabolites and degradates in or on the raw agricultural commodities dragon fruit at 1.5 ppm; vegetable, *Brassica,* head and stem, group 5–16 at 2.0 ppm; kohlrabi at 2.0 ppm; *Brassica,* leafy greens, subgroup 4–16B at 10 ppm; leafy greens subgroup 4–16A at 8.0 ppm; leaf petiole vegetable subgroup 22B at 8.0 ppm; celtuce at 8.0 ppm; fennel, Florence, fresh leaves and stalk at 8.0 ppm; and berry, low growing, except strawberry, subgroup 13–07H at 0.04 ppm. The petition also requested to amend 40 CFR 180.635 by removing the following spinetoram tolerances: *Brassica,* head and stem, subgroup 5A at 2.0 ppm; *Brassica,* leafy greens, subgroup 5B at 10 ppm; vegetable, leafy, except *Brassica,* group 4 at 8 ppm; and cranberry at 0.04 ppm. That document referenced a summary of the petition prepared by Dow AgroSciences, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is establishing several tolerances at different levels than requested. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections that repeat what has been previously published for tolerance rulemakings of the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemakings, and republishing the same sections is unnecessary. EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

EPA has previously published tolerance rulemakings for spinetoram, in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to spinetoram and established tolerances for residues of that chemical. EPA is incorporating previously published sections that remain unchanged from

those rulemakings as described further in this rulemaking.

Toxicological Profile. For a discussion of the Toxicological Profile of spinetoram, see Unit III.A. of the August 8, 2018 rulemaking (83 FR 38976) (FRL–9978–83).

Toxicological Points of Departure/Levels of Concern. For a summary of the Toxicological Points of Departure/Levels of Concern used for the safety assessment, see Unit III.B. of the August 8, 2018 rulemaking.

Exposure Assessment. Much of the exposure assessment remains unchanged from the previous rulemaking, although the new exposure assessment incorporates the additional dietary exposure from the petitioned-for tolerances. The residue levels, percent crop treated, and estimated drinking water concentrations used in the exposure assessment remain the same and are discussed in Unit III.C. of the August 8, 2018 rulemaking. Moreover, there have been no changes to residential exposures, so the Agency's approach for assessing residential (non-occupational, non-dietary exposures) is also discussed in that same Unit. Finally, the Agency's conclusions about cumulative effects remain the same as in that Unit.

Safety Factor for Infants and Children. EPA continues to conclude that there is reliable data showing that the safety of infants and children would be adequately protected if the FQPA SF were reduced from to 1X. The reasons for that decision are articulated in Unit III.D. of the August 8, 2018 rulemaking.

Aggregate Risks and Determination of Safety. EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and chronic PAD (cPAD). Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate points of departure (PODs) 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.

An acute analysis was not conducted as toxicological effects attributable to a single dose were not identified. Chronic dietary risks are below the Agency's level of concern of 100% of the cPAD: Children 1 to 2 years old are the population subgroup with the highest exposure estimate at 72% of the cPAD. The short-term aggregate MOE (food, water, and residential) is 200 for children 1 to less than 2 years old and 780 for adults. These MOEs do not exceed the target level of concern of 100. The short-term aggregate risk assessment is protective of intermediate-term exposure as the short-term and intermediate-term PODs are identical. EPA has also concluded that spinetoram is not expected to pose a cancer risk to humans based on the lack of evidence of carcinogenicity in the database.

Determination of Safety. Based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to spinetoram residues. More detailed information about the Agency's analysis can be found at *http://www.regulations.gov* in the document titled ''Spinosad/Spinetoram. Human Health Risk Assessment in Support of Proposed Spinetoram Tolerance for Residues in/on Imported Tea'' dated January 16, 2018 in docket ID EPA–HQ–OPP–2017–0352 and the document titled ''Spinosad and Spinetoram. Human Health Risk Assessment for Proposed Use on Dragon Fruit (Pitaya); Crop Group Expansion for Berry, Low Growing, Except Strawberry, Subgroup 13–07H; and Crop Group Conversions for Vegetable, Brassica, Head and Stem, Group 5–16; Brassica, Leafy Greens, Subgroup 4–16B; Leaf Petiole Vegetable Subgroup 22B; Leafy Greens Subgroup 4–16A; Celtuce; Fennel, Florence, Fresh Leaves and Stalk; and Kohlrabi.'' dated February 12, 2021 in docket ID number EPA–HQ–OPP–2019–0526.

IV. Other Considerations

A. Analytical Enforcement Methodology

For a discussion of the available analytical enforcement method, see Unit IV.A. of the August 8, 2018 rulemaking.

B. International Residue Limits

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

There are no Codex MRLs established for dragon fruit; berry, low growing, except strawberry, subgroup 13–07H; *Brassica,* leafy greens, subgroup 4–16B; celtuce; and fennel, Florence, fresh leaves and stalk.

The U.S. tolerances for kohlrabi and leafy greens subgroup 4–16A are harmonized with the Codex MRLs.

For two crop groups, the Codex MRL is lower than the U.S. tolerance: Leaf petiole vegetable subgroup 22B at 6 ppm instead of 8 ppm and for vegetable, *Brassica,* head and stem, group 5–16 at 0.3 ppm rather than 2 ppm. Harmonization of these tolerances is not possible because decreasing the U.S. tolerances to harmonize with the Codex MRL would put U.S. growers at risk of having violative residues despite legal use of the pesticide according to the label.

C. Revisions to Tolerances

Based upon review of the data supporting the petition, EPA is establishing tolerance levels consistent with Organization for Economic Cooperation and Development (OECD) Rounding Class Practice.

The petitioner requested separate subgroup tolerances for the *Brassica,* leafy greens, subgroup 4–16B at 10 ppm and leafy greens subgroup 4–16A at 8.0 ppm. EPA has decided to establish a single group tolerance for the vegetable, leafy, group 4–16 at 10 ppm to harmonize with Codex.

V. Conclusion

Therefore, tolerances are established for residues of spinetoram in or on berry, low growing, except strawberry, subgroup 13–07H at 0.04 ppm; celtuce at 8 ppm; dragon fruit at 1.5 ppm; fennel, Florence, fresh leaves and stalk at 8 ppm; kohlrabi at 2 ppm; leaf petiole vegetable subgroup 22B at 8 ppm; vegetable, *Brassica,* head and stem, group 5–16 at 2 ppm; and vegetable, leafy, group 4–16 at 10 ppm.

Additionally, the following tolerances are removed as unnecessary due to the establishment of the above tolerances: *Brassica,* head and stem, subgroup 5A; *Brassica,* leafy greens, subgroup 5B; cranberry; and vegetable, leafy, except *Brassica,* group 4.

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 and modifications 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: March 5, 2021.

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 § 180.635, amend the table in paragraph (a) as follows:

■ i. Add a table heading;

■ ii. Add alphabetically an entry for ''Berry, low growing, except strawberry, subgroup 13–07H'';

■ iii. Remove the entries for ''*Brassica,* head and stem, subgroup 5A''; and ''*Brassica,* leafy greens, subgroup 5B'';

■ iv. Add alphabetically an entry for ''Celtuce'';

■ v. Remove the entry for ''Cranberry'';

■ vi. Add alphabetically entries for ''Dragon fruit''; ''Fennel, Florence, fresh leaves and stalk''; ''Kohlrabi''; ''Leaf petiole vegetable subgroup 22B''; ''Vegetable, *Brassica,* head and stem, group 5–16''; and ''Vegetable, leafy, except *Brassica,* group 4''; and

■ vii. Remove the entry for ''Vegetable, leafy, group 4–16''.

The additions read as follows:

§ 180.635 Spinetoram; tolerances for residue.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Berry, low growing, except strawberry, subgroup 13–07H	0.04
* * * * *	
Celtuce	8
* * * * *	
Dragon fruit	1.5
* * * * *	
Fennel, Florence, fresh leaves and stalk	8
* * * * *	
Kohlrabi	2
Leaf petiole vegetable subgroup 22B	8
* * * * *	
Vegetable, *Brassica,* head and stem, group 5–16	2
Vegetable, leafy, group 4–16	10
* * * * *	

* * * * *

[FR Doc. 2021–07186 Filed 4–6–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0525; FRL–10020–23]

Spinosad; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of spinosad in or on multiple commodities that are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 7, 2021. Objections and requests for hearings must be received on or before June 7, 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–2019–0525, 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: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0525 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 June 7, 2021. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

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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 February 11, 2020 (85 FR 7708) (FRL–10005–02), 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 9E8779) by IR–4, IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide spinosad, including its metabolites and degradates in or on the raw agricultural commodities dragon fruit at 1.5 ppm; vegetable, *Brassica*, head and stem, group 5–16 at 2.0 ppm; kohlrabi at 2.0 ppm; vegetable, leafy, group 4–16 at 10.0 ppm; celtuce at 10.0 ppm; fennel, Florence, fresh leaves and stalk at 10.0 ppm; leaf petiole vegetable subgroup 22B at 10.0 ppm; and berry, low growing, except strawberry, subgroup 13–07H at 0.01 ppm. The petition also requested to amend 40 CFR 180.495 by removing the following spinosad tolerances: *Brassica*, head and stem, subgroup 5A at 2.0 ppm; *Brassica*, leafy greens, subgroup 5B at 10 ppm; vegetable, leafy, except *Brassica*, group 4 at 8 ppm; and cranberry at 0.01 ppm. That document referenced a summary of the petition prepared by Dow AgroSciences, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is establishing several tolerances at different levels than requested. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in

support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for spinosad including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with spinosad follows.

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections that repeat what has been previously published for tolerance rulemakings of the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemakings, and republishing the same sections is unnecessary. EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

EPA has previously published tolerance rulemakings for spinosad, in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to spinosad and established tolerances for residues of that chemical. EPA is incorporating previously published sections that remain unchanged from those rulemakings as described further in this rulemaking.

Toxicological Profile. For a discussion of the Toxicological Profile of spinosad, see Unit III.A. of the September 19, 2019 rulemaking (84 FR 49195) (FRL–9995–90).

Toxicological Points of Departure/ Levels of Concern. For a summary of the Toxicological Points of Departure/ Levels of Concern used for the safety assessment, see Unit III.B. of the September 29, 2019 rulemaking.

Exposure Assessment. Much of the exposure assessment remains unchanged from the previous rulemaking, although the new exposure assessment incorporates the additional dietary exposure from the petitioned-for tolerances. The residue levels, percent crop treated, and estimated drinking water concentrations used in the exposure assessment remain the same and are discussed in Unit III.C. of the September 29, 2019 rulemaking. Moreover, there have been no changes to residential exposures, so the Agency's approach for assessing residential (non-occupational, non-dietary exposures) is also discussed in that same Unit. Finally, the Agency's conclusions about cumulative effects remain the same as in that Unit.

Safety Factor for Infants and Children. EPA continues to conclude that there is reliable data showing that the safety of infants and children would be adequately protected if the FQPA SF were reduced from to 1X. The reasons for that decision are articulated in Unit III.D. of the August 8, 2018 rulemaking.

Aggregate Risks and Determination of Safety. EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and chronic PAD (cPAD). Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate points of departure (PODs) 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.

An acute analysis was not conducted as toxicological effects attributable to a single dose were not identified. Chronic dietary risks are below the Agency's level of concern of 100% of the cPAD: Children 1 to 2 years old are the population subgroup with the highest exposure estimate at 72% of the cPAD. The short-term aggregate MOE (food, water, and residential) is 200 for children 1 to less than 2 years old and 780 for adults. These MOEs do not exceed the target level of concern of 100. The short-term aggregate risk assessment is protective of intermediate-term exposure as the short-term and intermediate-term PODs are identical. EPA has also concluded that spinosad is not expected to pose a cancer risk to humans based on the lack of evidence of carcinogenicity in the database.

Determination of Safety. Based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to spinosad residues. More detailed information about the Agency's analysis can be found at *http://www.regulations.gov* in the document titled ''Spinosad. Summary of Residue Chemistry Data and Human Health Risk Assessment for the Establishment of a Tolerance Without U.S. Registration on Tea.'' dated March 6, 2019 in docket ID EPA–HQ–OPP–2018–0525 and the document titled ''Spinosad and Spinetoram. Human Health Risk Assessment for Proposed Use on Dragon Fruit (Pitaya); Crop Group Expansion for Berry, Low Growing, Except Strawberry, Subgroup 13–07H; and Crop Group Conversions for Vegetable, Brassica, Head and Stem, Group 5–16; Brassica, Leafy Greens, Subgroup 4–16B; Leaf Petiole Vegetable Subgroup 22B; Leafy Greens Subgroup 4–16A; Celtuce; Fennel, Florence, Fresh Leaves and Stalk; and Kohlrabi.'' dated February 12, 2021 in docket ID number EPA–HQ–OPP–2019–0525.

IV. Other Considerations

A. Analytical Enforcement Methodology

For a discussion of the available analytical enforcement method, see Unit IV.A. of the September 29, 2019 rulemaking.

B. International Residue Limits

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

There are no Codex MRLs established for dragon fruit, celtuce, and fennel, Florence, fresh leaves and stalk.

The U.S. tolerances for kohlrabi; vegetable, *Brassica,* head and stem, group 5–16; and vegetable, leafy, group 4–16 are harmonized with the Codex MRLs.

The Codex MRL for the leaf petiole vegetable subgroup 22B is 2 ppm while the U.S. tolerance is 8 ppm. Harmonization is not possible because decreasing the U.S. tolerance to harmonize with the Codex MRL would put U.S. growers at risk of having violative residues despite legal use of the pesticide according to the label.

The U.S. tolerance on the berry, low growing, except strawberry, subgroup 13–07H is 0.04 ppm, and the Codex MRL is 0.02 ppm. EPA is not harmonizing this tolerance with Codex because EPA's spinosad tolerance is based on available residue data for the toxicologically equivalent spinetoram, which supports the higher tolerance.

C. Revisions to Tolerances

Based upon review of the data supporting the petition, EPA is establishing tolerance levels consistent with Organization for Economic Cooperation and Development (OECD) Rounding Class Practice.

The tolerance for berry, low growing, except strawberry, subgroup 13–07H is being established at 0.04 instead of 0.01 as proposed. Due to the toxicological equivalence and similar use patterns of spinosad and spinetoram, EPA allows for the bridging of field trial residue data between the two chemicals when consistent with the application rates. The available data supports establishing the higher tolerance for this subgroup.

The tolerances for the leaf petiole vegetable subgroup 22B, celtuce, and fennel, Florence, fresh leaves and stalk are being established at 8 ppm rather than 10 ppm as proposed. This is so the tolerance stays harmonized with Canada, which is a major export market for these commodities.

V. Conclusion

Therefore, tolerances are established for residues of spinosad in or on berry, low growing, except strawberry, subgroup 13–07H at 0.04 ppm; celtuce at 8 ppm; dragon fruit at 1.5 ppm; fennel, Florence, fresh leaves and stalk at 8 ppm; kohlrabi at 2 ppm; leaf petiole vegetable subgroup 22B at 8 ppm; vegetable, *Brassica,* head and stem, group 5–16 at 2 ppm; and vegetable, leafy, group 4–16 at 10 ppm.

Additionally, the following tolerances are removed as unnecessary due to the establishment of the above tolerances: *Brassica,* head and stem, subgroup 5A; *Brassica,* leafy greens, subgroup 5B; cranberry; and vegetable, leafy, except *Brassica,* group 4.

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 and modifications 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: March 5, 2021.

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 § 180.495, amend the table in paragraph (a) as follows:
■ i. Add a heading to the table;
■ ii. Add alphabetically an entry for ''Berry, low growing, except strawberry, subgroup 13–07H'';
■ iii. Remove the entries for ''*Brassica,* head and stem, subgroup 5A''; and ''*Brassica,* leafy greens, subgroup 5B'';
■ iv. Add alphabetically an entry for ''Celtuce'';
■ v. Remove the entry for ''Cranberry'';
■ vi. Add alphabetically entries for ''Dragon fruit''; ''Fennel, Florence, fresh leaves and stalk''; ''Kohlrabi''; ''Leaf petiole vegetable subgroup 22B''; and ''Vegetable, *Brassica,* head and stem, group 5–16'';
■ vii. Remove the entry for ''Vegetable, leafy, except *Brassica,* group 4''; and
■ viii. Add alphabetically an entry for ''Vegetable, leafy, group 4–16''.

The additions read as follows:

§ 180.495 Spinosad; tolerances for residue.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Berry, low growing, except strawberry, subgroup 13–07H	0.04
* * * * *	
Celtuce	8

TABLE 1 TO PARAGRAPH (a)—Continued

Commodity	Parts per million
* * * * *	
Dragon fruit	1.5
Fennel, Florence, fresh leaves and stalk	8
* * * * *	
Kohlrabi	2
Leaf petiole vegetable subgroup 22B	8
* * * * *	
Vegetable, *Brassica*, head and stem, group 5–16	2
Vegetable, leafy, group 4–16	10
* * * * *	

* * * * *

[FR Doc. 2021–07185 Filed 4–6–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0103; FRL–10015–73]

2,2-Dimethyl-1,3-dioxolane-4-methanol; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance for residues of 2,2-dimethyl-1,3-dioxolane-4-methanol (CAS Reg. No. 100–79–8) when used as an inert ingredient in pesticide formulations applied to growing crops and raw agricultural commodities after harvest and in antimicrobial formulations applied to certain food-contact surfaces. SciReg. Inc., on behalf of Solvay USA, submitted a petition to EPA under section 346a of the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2,2-dimethyl-1,3-dioxolane-4-methanol, when used in accordance with these exemptions.

DATES: This regulation is effective April 7, 2021. Objections and requests for hearings must be received on or before June 7, 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–2017–0103, 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: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of 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–2017–0103 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 June 7, 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–2017–0103, 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. Petition for Exemption

In the **Federal Register** of June 8, 2017 (82 FR 26642) (FRL–9961–14), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11024) by SciReg. Inc., 12733, Director's

Loop, Woodbridge, VA 22192, on behalf of Solvay USA, 504 Carnegie Center, Princeton, NJ 08540. The petition requested that 40 CFR 180.910 and 180.940 be amended by establishing an exemption from the requirement of a tolerance for residues of 2,2-dimethyl-1,3-dioxolane-4-methanol (CAS Reg. No.100–79–8) when used as an inert ingredient (solvent/cosolvent) in pesticide formulations applied to growing crops or raw agricultural commodities after harvest and in antimicrobial pesticide formulations (food-contact surface sanitizing solutions). That document referenced a summary of the petition prepared by SciReg, Inc., on behalf of Solvay USA 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.C.

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

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 appreciable risks 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 finite 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 for 2,2-dimethyl-1,3-dioxolane-4-methanol including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with 2,2-dimethyl-1,3-dioxolane-4-methanol 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 2,2-dimethyl-1,3-dioxolane-4-methanol as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies 2,2-Dimethyl-1,3-dioxolane-4-methanol exhibits low levels of acute toxicity via the oral, dermal, and inhalation routes of exposure. It is not irritating to the rabbit skin, the rabbit eye, and is not a dermal sensitizer. 2,2-Dimethyl-1,3-dioxolane-4-methanol is negative for genotoxic effects in a battery of genotoxicity assays. Based on a cancer expert prediction system (DEREK analysis), 2,2-dimethyl-1,3-dioxolane-4-methanol is unlikely to pose a carcinogenic risk to humans. 2,2-Dimethyl-1,3-dioxolane-4-methanol exhibits no adverse toxicological effects in a combined repeat dose oral toxicity study with the reproduction/developmental toxicity screening test in rats at doses equal to or exceeding the limit dose of 1,000 mg/kg/day.

B. Toxicological Points of Departure/Levels of Concern

Due to the lack of hazard associated with 2,2-dimethyl-1,3-dioxolane-4-methanol based on the available data, no points of departure were identified for assessing risk; therefore, a quantitative risk assessment was not conducted.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to 2,2-dimethyl-1,3-dioxolane-4-methanol, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from 2,2-dimethyl-1,3-dioxolane-4-methanol in food as follows:

Acute and chronic dietary assessments take into account exposure estimates from dietary consumption of food and drinking water. Because no adverse effects attributable to a single or repeat exposures to 2,2-dimethyl-1,3-dioxolane-4-methanol were seen in the toxicity databases, quantitative dietary risk assessments are not appropriate. Due to the expected use of 2,2-dimethyl-1,3-dioxolane-4-methanol in pesticide formulations applied to growing crops and raw agricultural commodities post-harvest, and in antimicrobial products, it is reasonable to expect that there will be some exposure residues of 2,2-dimethyl-1,3-dioxolane-4-methanol in or on food from its use in pesticide products.

2. *From 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, tables).

It is possible that 2,2-dimethyl-1,3-dioxolane-4-methanol may be used as an inert ingredient in pesticide products that may result in residential exposures,

although no residential uses are currently proposed. A residential exposure assessment was not conducted because no endpoint of concern following a single or repeat dose exposure was identified in the available studies.

D. Safety Factor for Infants and Children

Because there are no threshold effects associated with 2,2-dimethyl-1,3-dioxolane-4-methanol, EPA conducted a qualitative assessment. As part of that assessment, the Agency did not use safety factors for assessing risk, and no additional safety factor is needed for assessing risk to infants and children. Based on an assessment of 2,2-dimethyl-1,3-dioxolane-4-methanol, EPA has concluded that there are no toxicological endpoints of concern for the U.S. population, including infants and children.

E. Aggregate Risks and Determination of Safety

Taking into consideration all available information on 2,2-dimethyl-1,3-dioxolane-4-methanol, EPA has determined that there is a reasonable certainty that no harm to any population subgroup, including infants and children, will result from aggregate exposure to 2,2-dimethyl-1,3-dioxolane-4-methanol under reasonable foreseeable circumstances. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.910 and 180.940 for residues of 2,2-dimethyl-1,3-dioxolane-4-methanol when used as an inert ingredient in pesticide formulations is safe under FFDCA.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limit.

B. Response to Comments

One commenter opposed a tolerance for residues of pesticides in or on food, although the commenter did not present any information that the Agency could take into account when making a determination about the safety of this pesticide. Although the Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops, the existing legal framework provided by section 408 of the FFDCA authorizes EPA to establish tolerances when it determines that the tolerance is safe. Upon consideration of the validity, completeness, and reliability of the available data as well as other factors the FFDCA requires EPA to consider, EPA has determined that these exemptions from the requirement of a tolerance are safe. The commenters have provided no information to indicate that 2,2-dimethyl-1,3-dioxolane-4-methanol is not safe.

VI. Conclusions

Therefore, exemptions from the requirement of a tolerance are established under 40 CFR 180.910 and 180.940 for 2,2-dimethyl-1,3-dioxolane-4-methanol (CAS Reg. No 100–79–8) when used as an inert ingredient as solvent/cosolvent in pesticide formulations applied to growing crops and raw agricultural commodities after harvest and in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils.

VII. Statutory and Executive Order Reviews

This action establishes exemptions 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 tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

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

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

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 20, 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 § 180.910, amend table 1 by adding alphabetically the inert ingredient ''2,2-Dimethyl-1,3-dioxolane-4-methanol (CAS Reg. No.100–79–8)'' to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO 180.910

Inert ingredients	Limits	Uses
* * * * *	*	*
2,2-Dimethyl-1,3-dioxolane-4-methanol (CAS Reg. No.100–79–8)		Solvent/cosolvent.
* * * * *	*	*

■ 3. In § 180.940, amend the table in paragraph (a) by adding alphabetically the inert ingredient ''2,2-Dimethyl-1,3-dioxolane-4-methanol'' to read as follows:

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

* * * * *

(a) * * *

TABLE 180.940(a)

Pesticide chemical	CAS Reg. No.	Limits
* * * * *	*	*
2,2-Dimethyl-1,3-dioxolane-4-methanol	100–79–8	
* * * * *	*	*

* * * * *

Editorial note: This document was received for publication by the Office of the Federal Register on April 1, 2021.

[FR Doc. 2021–07028 Filed 4–6–21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0531; FRL–10017–27]

Penthiopyrad; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of penthiopyrad in or on persimmon. Mitsui Chemicals Agro, Inc., c/o Landis International, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 7, 2021. Objections and requests for hearings must be received on or before June 7, 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–2019–0531, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: 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: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0531 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 June 7, 2021. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

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- *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.*

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of June 24, 2020 (85 FR 37806) (FRL–10010–82), 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 9E8773) by Mitsui Chemicals Agro, Inc. c/o Landis International, Inc., 3185 Madison Highway, P.O. Box 5126, Valdosta, GA 31603–5126. The petition requested that 40 CFR 180.658 be amended by establishing a tolerance for residues of the fungicide, Penthiopyrad (*N*-[2-(1,3-dimethylbutyl)-3-thienyl]-1-methyl-3-(trifluoromethyl)-1*H*-pyrazole-4-carboxamide) in or on persimmon, at 3.0 parts per million (ppm). That document referenced a summary of the petition prepared by Mitsui Chemicals Agro, Inc. c/o Landis International, Inc., the registrant, which is available in the docket for this action, docket ID number EPA–HQ–OPP–2019–0531, at *http://www.regulations.gov.* There were no comments received in response to the notice of filing. EPA is setting a tolerance of 3 ppm in persimmon, instead of the petitioner-proposed tolerance value of 3.0 ppm. This change is explained in Unit IV.C.

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 does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

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

B. Aggregate Risk Assessment

In an effort to streamline **Federal Register** publications, EPA is directing readers to certain sections of **Federal Register** notifications for previous tolerance rulemakings for the same pesticide that contain information that has not changed in the current risk assessment. To that end, on June 6, 2019, EPA published in the **Federal Register** a final rule establishing a tolerance for residues of penthiopyrad in or on multiple commodities based on the Agency's conclusion that aggregate exposure to penthiopyrad is safe for the general population, including infants and children. *See* 84 FR 26352 (FRL–9994–08). Please refer to the following sections of the previous tolerance rulemaking that contain information that has remained the same under the current risk assessment for 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 paragraph; and III.D (Safety Factor for Infants and Children).

Updates to exposure assessment. The Agency conducted an updated risk assessment to evaluate exposure to residues of penthiopyrad on persimmon. EPA's acute and chronic dietary (food and drinking water) exposure assessments have been updated to include the additional exposure from use of penthiopyrad on persimmon. As to residue levels in food, the dietary exposure assessments are based on tolerance-level residues and assumed 100 percent crop treated (PCT). There will be no U.S. registrations for use of penthiopyrad on persimmon, and there is no proposed new residential use. Therefore, EPA's assessments of dietary exposure from drinking water and non-dietary (*i.e.,* residential) exposure, as well as cancer classification and cumulative effects from substances with a common mechanism of toxicity, have not changed and are described in the previous tolerance rulemaking.

Assessment of aggregate risks. Acute aggregate risk estimates are equal to acute dietary (food and drinking water) risk estimates, which are below the Agency's level of concern of 100% of the acute population adjusted dose (aPAD): The exposure estimate is 20% of the aPAD at the 95th percentile of exposure for infants less than 1 year old, which is the population subgroup with the highest exposure estimate. Chronic aggregate risk estimates are equal to chronic dietary (food and drinking water) risk estimates, which are below

the Agency's level of concern of 100% of the chronic population adjusted does (cPAD): The exposure estimate is 28% of the cPAD for infants less than 1 year old, which is the population subgroup with the highest exposure estimate. Short-term aggregate risk estimates are equal to the most conservative residential exposure estimates plus chronic dietary exposure estimates (considered to be background dietary exposure). For adults, the most conservative residential exposure estimate is dermal exposure through high contact lawn activity, with a margin of exposure (MOE) above the Agency's level of concern of 100 (MOE = 560). For children, the most conservative residential exposure estimate is combined dermal and incidental oral exposure through high contact lawn activity, with an MOE above the Agency's level of concern of 100 (MOE = 270). Moreover, the children 1 to less than 2 years old population subgroup was chosen for the short-term aggregate risk estimate for children, since the exposure estimate for this subgroup is protective for all other children subpopulations. Considering both the chronic dietary (food and drinking water) exposures and the high contact lawn activity residential exposures for both adults and children, EPA has concluded the short-term aggregate MOEs are 440 and 220 for adults and children, respectively, which are above the level of concern of 100 and therefore are not of concern.

C. Determination of Safety

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to penthiopyrad residues. More detailed information on the subject action to establish a tolerance in or on persimmon can be found in the document entitled, ''Penthiopyrad. Human Health Risk Assessment for the Proposed Tolerance Without a U.S. Registration on Persimmon.'' dated 12/14/2020 at *www.regulations.gov,* under docket ID number EPA–HQ–OPP–2019–0531.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (a liquid chromatography-tandem mass spectrometry (LC/MS/MS) method known as Method CEM 3399–001) is available to enforce penthiopyrad tolerances. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

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

The established Codex MRL for penthiopyrad in persimmons is 0.4 mg/kg. The 3 ppm tolerance being established is harmonized with the existing Japanese MRL of 3 ppm instead, which is consistent with the tolerance value requested by the petitioner. According to the registrant, the locations of the field trials for residue data reflect the primary importation of persimmon from Japan. The registrant cited USDA Economic Research Service data indicating that Spain, Israel, and Chile are the only countries with >5% imports of persimmons into the United States. The registrant indicated that penthiopyrad is registered in Spain and Israel but not on persimmon and that penthiopyrad is not registered in Chile. Therefore, the registrant posits that the only importing country on which penthiopyrad would be registered for use on persimmon would be Japan.

C. Revisions to Petitioned-For Tolerances

The Agency is setting a tolerance in or on persimmon of 3 ppm rather than the petitioned-for tolerance value of 3.0 ppm. This value is in accordance with the Organization for Economic Cooperation and Development (OECD) MRL calculation procedure's rounding class practices.

V. Conclusion

Therefore, tolerances are established for residues of penthiopyrad (*N*-[2-(1,3-dimethylbutyl)-3-thienyl]-1-methyl-3-(trifluoromethyl)-1*H*-pyrazole-4-carboxamide) in or on persimmon at 3 ppm.

VI. Statutory and Executive Order Reviews

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

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance for residues 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: March 16, 2021.

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 § 180.658, amend paragraph (a)(1) by designating the table and adding in alphabetical order in newly designated Table 1 to paragraph (a)(1) the entry ''Persimmon'' and footnote 2 to read as follows:

§ 180.658 Penthiopyrad; tolerances for residues.

(a) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
* * * * *	
Persimmon [2]	3
* * * * *	
* * * * *	

[2] There are no U.S. registrations for this commodity as of April 7, 2021.

* * * * *

[FR Doc. 2021–07129 Filed 4–6–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 27

[WT Docket No. 19–348; FCC 21–32; FRS 18035]

Facilitating Shared Use in the 3100–3550 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts changes to its rules to make 100 megahertz of mid-band spectrum in the 3.45–3.55 GHz band available for flexible use. It allocates the 3.45 GHz band to add a co-primary non-Federal fixed and mobile (except aeronautical mobile) allocation and adopted technical, licensing, and competitive bidding rules for this service largely consistent with its rules for other flexible-use wireless spectrum bands. While the majority of incumbent Federal operations in this band will be relocated to alternate spectrum, some operations will continue and must be protected from harmful interference through a system of coordination in specific Cooperative Planning Areas and Periodic Use Areas, described in the *Second Report and Order.* In addition, the Commission requires non-Federal radiolocation operations in the band to sunset operations within 180 days after the grant of new flexible-use licenses and provides for reimbursement of reasonable relocation costs. Further, the Commission requires amateur operators in the band to cease operations within 90 days of the public notice announcing the close of the auction, while allowing these amateur operations to continue in the 3.3–3.45 GHz band pending future Commission action in that spectrum.

DATES:

Effective date: This rule is effective June 7, 2021.

Compliance date: Compliance will not be required for §§ 2.106, 27.14, 27.1603, 27.1605, and 27.1607 of the Commission's rules until the Commission publishes a document in the **Federal Register** announcing that compliance date.

Applicability of Order of Proposed Modification: The Order of Proposed Modification, discussed in section 4 of the **SUPPLEMENTARY INFORMATION**, is applicable as of the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Joyce Jones, Wireless Telecommunications Bureau, Mobility Division, (202) 418–1327 or *joyce.jones@fcc.gov,* or Ira Keltz, Office of Engineering and Technology, (202) 418–0616 or *ira.keltz@fcc.gov.* For information regarding the PRA information collection requirements, contact Cathy Williams, Office of Managing Director, at 202–418–2918 or *cathy.williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order, Order on Reconsideration, and Order of Proposed Modification* in WT Docket No. 19–348, FCC 21–32, adopted on March 17, 2021, and released on March 18, 2021. The full text of this document including all Appendices, is available for public inspection at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-21-32A1.pdf.* 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 Consumer and Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the *Second Report and Order* on small entities. As required by the Regulatory Flexibility Act, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking* (*FNPRM*) released in October 2020 in this proceeding (85 FR 66888, October

21, 2020). The Commission sought written public comment on the proposals in the *FNPRM*, including comments on the IRFA. No comments were filed addressing the IRFA. This FRFA conforms to the RFA. The Commission will send a copy of the *Second Report and Order, Order on Reconsideration, and Order of Proposed Modification, and Orders*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act

This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, it contains 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).

Congressional Review Act

The Commission will send a copy of the *Second Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Synopsis

I. Introduction

In the *Second Report and Order* the Commission takes steps to advance Congressional and Commission objectives to make more mid-band spectrum available for fifth generation wireless services, or 5G. Specifically, the Commission begins implementation of the Beat China by Harnessing Important, National Airwaves for 5G Act of 2020 (Beat CHINA for 5G Act of 2020), Consolidated Appropriations Act, 2021, Public Law 116–260, Division FF, Title IX, Sec. 905, which requires the Commission to start an auction to grant new initial licenses subject to flexible use in the 3450–3550 MHz (3.45 GHz) band by December 31, 2021. Together with its Federal partners in the Executive Branch, including the White House Office of Science and Technology Policy and National Economic Council, the National Telecommunications and Information Administration (NTIA), and the Department of Defense (DoD), the Commission has worked with unprecedented speed and collaboration to make 100 megahertz of mid-band spectrum in the 3.45 GHz band available for flexible use. The Commission's framework will enable full-power commercial use (*i.e.,* non-Federal, primary, flexible use, including for private mobile radio services) of this band and require that future licensees deploy their networks quickly, so that that this spectrum is in put in service of the American people. The Commission also takes steps to balance the needs of Federal incumbents where and when they require continued access to the band and relocates important non-Federal weather forecasting services so that they are not adversely impacted by the Commission's actions. Collectively, the 3.45 GHz band and the neighboring 3.5 GHz and 3.7 GHz bands will offer 530 megahertz of contiguous mid-band spectrum for 5G services.

II. Background

The lower 3 GHz band—and the 3450 MHz to 3550 MHz portion of the band (3.45–3.55 GHz band) in particular—has been targeted as spectrum to support 5G both here and abroad, and assessed within the Federal Government, across the legislative and executive branches, as well as within the Commission. The National Telecommunications and Information Administration (NTIA) identified the 3450–3550 MHz spectrum band as a potential candidate for shared use between Federal incumbents and commercial services two years ago. In 2018, Congress passed the Fiscal Year 2018 omnibus spending bill, which directed NTIA to work with the Commission on identifying sharing opportunities in the 3.1–3.55 GHz band.

Congress addressed the pressing need for spectrum to support broadband, including mid-band spectrum, in the Fiscal Year 2018 omnibus spending bill, which included the Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act (MOBILE NOW Act) under Title VI of RAY BAUM'S Act. *See* Consolidated Appropriations Act, 2018, Public Law 115–141, Division P, the Repack Airwaves Yielding Better Access for Users of Modern Services (RAY BAUM'S) Act, Title VI (the Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act or MOBILE NOW Act). The MOBILE NOW Act mandated that the Secretary of Commerce, working through NTIA: (1) Submit, in consultation with the Commission, a report by March 23, 2020, on the feasibility of ''allowing commercial wireless service, licensed or unlicensed, to share use of the frequencies between 3100 megahertz and 3550 megahertz, and (2) identify with the Commission ''at least 255 megahertz of Federal and non-Federal spectrum for mobile and fixed wireless broadband use'' by December 31, 2022. MOBILE NOW Act section 605(a). Shortly before Congress signed the 2018 omnibus spending bill, NTIA announced that it had identified the 3.45–3.55 GHz band for study for potential repurposing to spur commercial wireless innovation. In 2020, the White House and the DoD formed America's Mid-Band Initiative Team (AMBIT) with the goal of making 100 megahertz of contiguous mid-band spectrum available in the 3.45–3.55 GHz band for full commercial use.

In December 2020, Congress adopted the Beat CHINA for 5G Act of 2020. The Act requires NTIA, no later than June 25, 2021, to ''begin the process of withdrawing or modifying the assignments to Federal Government stations of the [3.45 GHz band] as necessary'' for the Commission to reallocate and auction the band for flexible commercial use. Beat CHINA for 5G Act of 2020 section 905(c)(1). The Act further requires the Commission to begin a system of competitive bidding to grant new initial licenses for the use of a portion or all of the 3.45 GHz band, subject to flexible-use service rules, no later than December 31, 2021. Beat CHINA for 5G Act of 2020 section 905(d)(1)(B). Finally, the Act provides an exemption to the 18-month FCC auction notification requirement in the Commercial Spectrum Enhancement Act (CSEA). *Id.* section 905(d)(2); 47 U.S.C. 923(g)(4)(A)

In September 2020, the Commission released a *Report and Order* (85 FR 64062, October 9, 2020) and the *FNPRM.* The *Report and Order* adopted the Commission's 2019 proposal (85 FR 3579, January 22, 2020) to remove the secondary, non-Federal allocations from the 3.3–3.55 GHz band. The *FNPRM* proposed: (1) Allocation changes to the 3.3–3.55 GHz band to enable future commercial use; (2) coordination between future flexible-use licensees and Federal incumbents that remain in the band; (3) relocation logistics for non-Federal secondary users; and (4) the technical, licensing, and operating rules that would create a successful coordination regime both within the band and with Federal and non-Federal operations in adjacent bands.

III. Second Report and Order

A. Allocating the 3.45 GHz Band for Commercial Wireless Use

Consistent with the Beat CHINA for 5G Act of 2020, the Commission adopts its proposal to add a primary non-Federal fixed and mobile, except aeronautical mobile, allocation to the 3.45 GHz band nationwide. As the Commission noted in the *FNPRM,*

section 303(y) provides the Commission with authority to allocate spectrum for flexible use if: ''(1) such use is consistent with international agreements to which the United States is a party; and (2) the Commission finds, after notice and opportunity for public comment, that (A) such an allocation would be in the public interest; (B) such use would not deter investment in communications services and systems, or technology development; and (C) such use would not result in harmful interference among users.'' 47 U.S.C. 303(y)

The Commission's proposed non-Federal allocation is consistent with and furthers these goals for several reasons. First, the allocation is consistent with international agreements. Indeed, it will harmonize the Commission's allocation for the 3.45 GHz band with international allocations. As 5G Americas notes, there is now a critical mass of countries that have auctioned or otherwise made spectrum available in the 3.3–4.2 GHz range (band n77). Second, the proposed allocation will make more critical mid-band spectrum available for 5G and other advanced wireless services (AWS). The allocation will foster more intensive 5G use of mid-band spectrum to facilitate and incentivize investment in next-generation wireless services. Third, the Commission expects that the allocation will promote investments in the band by flexible-use licensees. Mid-band spectrum is particularly well-suited for 5G buildouts due to its desirable mix of coverage, capacity, and propagation characteristics, and the Commission anticipates that this spectrum will attract significant investment from 5G network operators. Finally, the Commission's actions in the *Second Report and Order* will promote effective coordination between new flexible-use licensees and remaining incumbent Federal operations. No commenter disagrees with the Commission's proposed flexible-use allocation under section 303(y). Accordingly, the Commission adopts the proposal to add a primary non-Federal fixed and mobile, except aeronautical mobile, allocation to the 3.45 GHz band nationwide.

Although the Commission allocates the 3.45 GHz band for non-Federal fixed and mobile (except aeronautical mobile) operations nationwide, at this time, as discussed below, it will only license this band for non-Federal operations in the contiguous United States because the AMBIT efforts limited their focus to the contiguous United States.

B. Cooperative Sharing Regime in the 3.45 GHz Band

The 3.45 GHz band currently is used by the DoD for high- and low-powered radar systems on a variety of platforms in the 3 GHz band, including fixed, mobile, shipborne, and airborne operations. Both NTIA and the AMBIT efforts identified the 3.45 GHz band for cooperative sharing between incumbent DoD operations and new commercial operators, under which commercial providers will be able to use the band on an unrestricted basis, except under a few limited circumstances (described below). Consistent with the conclusions of the Commission's Federal partners, the Commission adopts a cooperative sharing regime for the 3.45 GHz band.

Under this framework, non-Federal systems generally will have unencumbered, full-power use of the entire band across the contiguous United States and, with limited exceptions, Federal systems operating in the band may not cause harmful interference to non-Federal operations in the band. In limited circumstances and in locations where current incumbent Federal systems will remain in the band, however, non-Federal systems will not be entitled to protection against harmful interference from Federal operations (and limited restrictions will be placed on non-Federal operations). These exceptions will occur only in geographic areas specifically identified as Cooperative Planning Areas and Periodic Use Areas. NTIA describes these areas as key military training facilities, important test sites, and strategically significant Navy home ports and shipyards. NTIA stresses that these areas are not exclusion zones. The Commission emphasizes that commercial operations are not precluded within Cooperative Planning Areas and Periodic Use Areas. Rather, incumbent Federal operations and new flexible-use operations must coordinate with each other to facilitate shared use of the band in these specified areas and during specified time periods. The coordination regime the Commission adopts is intended to minimize the impacts from incumbent Federal operations on future commercial operations while still enabling effective Federal operations where and when necessary, given the need to preserve military readiness and capabilities and support real-world operations when required.

This coordination regime builds upon the AWS–3 framework and incorporates lessons learned from AWS–3 and other shared services, such as the Citizens Broadband Radio Service. As with those services, and with AWS–3 in particular, new flexible-use 3.45 GHz Service licensees must coordinate with DoD incumbents to facilitate shared use of the band, here within Cooperative Planning Areas and Periodic Use Areas. But beyond simply coordinating within those areas, Federal and non-Federal operators are encouraged to enter into mutually acceptable operator-to-operator agreements to permit more extensive flexible use within Cooperative Planning and Periodic Use Areas by agreeing to a technical approach that mitigates the interference risk to Federal operations. The current parameters of Cooperative Planning and Periodic Use areas, as discussed further below, are the default, but in practice should be a starting point for negotiations between flexible-use licensees and Federal incumbents; more expansive use by the flexible-use licensee can be agreed to in areas and under circumstances or parameters acceptable to the Federal incumbent. The Commission adopts this progression in coordination regimes to unleash mid-band spectrum for next-generation wireless services. Further, this approach is consistent with the AMBIT's goal of providing immediate, full power, commercial access to 100 megahertz of contiguous spectrum between 3.45–3.55 GHz, to the maximum extent possible. The coordination framework will benefit consumers as well as Federal agencies and the military, as they can also take advantage of these additional commercial broadband and 5G networks and the economies of scale they create.

1. Cooperative Planning Areas and Periodic Use Areas

Definitions.—During the AMBIT efforts, the DoD identified a list of ''Cooperative Planning Areas,'' within which it anticipates that Federal operations will continue after the assignment of flexible-use licenses in the band. These areas are limited in size and scope and include military training facilities, test sites, Navy home ports, and shipyards. The Commission defines Cooperative Planning Areas as geographic locations in which non-Federal operations shall coordinate with Federal systems in the band to deploy non-Federal operations in a manner that shall not cause harmful interference to Federal systems operating in the band. In these areas, operators of non-Federal stations may be required to modify their operations (*e.g.,* reduce power, add filters adjust antenna pointing angles, install shielding, etc.) to protect Federal operations against harmful interference and to avoid, where possible,

interference and potential damage to the non-Federal operators' systems. Further, in these areas, non-Federal operations may not claim interference protection from Federal systems. However, Federal and non-Federal operators may reach mutually acceptable operator-to-operator agreements to permit more extensive non-Federal use by identifying and mutually agreeing upon a technical approach that mitigates the interference risk to Federal operations. To the extent that high-powered Federal operations will remain that may cause harmful interference to commercial operations, NTIA has recommended that Federal operators should share information about these risks with the commercial operators in the context of coordination agreements. NTIA states that, ''[t]o the extent possible, Federal use in Cooperative Planning Areas will be chosen to minimize operational impact on non-Federal users.'' Letter from Charles Cooper, Associate Administrator, NTIA, to Ronald T. Repasi, Acting Chief, OET, FCC and Donald Stockdale, Chief, WTB, FCC, WT Docket No. 19–348, at Enclosure 1 (filed Sept. 8, 2020) (NTIA 2020 *Ex Parte* Letter).

The Commission includes in part 2 of its rules a more detailed list of parameters for such areas that NTIA has provided. For each Cooperative Planning Area, the Commission provides either a point and radius or a series of geographic coordinates (which create a polygon) to define the boundary of the area. Using this information, potential bidders will be able to determine precisely which areas will require coordination with the DoD. NTIA states that the DoD will create a workbook, similar to the one that it created in the AWS–3 transition, to provide potential bidders with additional information about these areas before bidding commences in the Commission's auction.

In addition, the DoD has identified several ''Periodic Use Areas'' that overlap with certain Cooperative Planning Areas. In these Periodic Use Areas, the DoD will need episodic access to all or a portion of the band in specific, limited geographic areas, in which it will coordinate with affected licensees for specific times and bandwidths. Accordingly, the Commission defines Periodic Use Areas as geographic locations in which non-Federal operations in the band shall not cause harmful interference to Federal systems operating in the band for episodic periods. Moreover, during these times and in these areas, Federal users will require interference protection from non-Federal operations. As with Cooperative Planning Areas, within Periodic Use Area, operators of non-Federal stations may be required to temporarily modify their operations (*e.g.,* reduce power, filtering, adjust antenna pointing angles, shielding, etc.) to protect Federal operations from harmful interference, which may include restrictions on non-Federal stations' ability to radiate at certain locations during specific periods of time. During such episodic use, non-Federal users in Periodic Use Areas must alter their operations to avoid harmful interference to Federal systems' temporary use of the band, and during such times, non-Federal operations may not claim interference protection from Federal systems. However, Federal and non-Federal operators may reach mutually acceptable operator-to-operator agreements such that a Federal operator may not need to activate a Periodic Use Area if a mutually agreeable technical approach mitigates the interference risk to Federal operations. NTIA notes that, ''[t]o the extent possible, Federal use in Periodic Use Areas will be chosen to minimize operational impact on non-Federal users.'' NTIA 2020 *Ex Parte* Letter at Enclosure 1. The Commission notes that ''[r]estrictions and authorizations for the Cooperative Planning Areas remain in effect during periodic use unless specifically relieved in the coordination process.''

The Commission includes a list of Periodic Use Areas in part 2 of its rules. As with Cooperative Planning Areas, the Commission provides either a point and radius or a series of coordinates (which create a polygon) to define the boundaries of the area within which future licensees must coordinate with the DoD. In both Cooperative Planning and Periodic Use Areas, the coordination procedures the Commission adopts in the *Second Report and Order* will ensure maximum possible use of flexible-use licenses while allowing the DoD to continue to operate in these areas with protection against harmful interference adequate to preserve military readiness, capabilities, and national security.

Parameters.—NTIA and the DoD identified 33 Cooperative Planning Areas, 23 of which overlap with Periodic Use Areas. In defining each area, the DoD's analysis employed certain assumptions and parameters, including: (1) 5G networks operating at a maximum power of 1640 watts/MHz in urban environments and 3280 watts/MHz in non-urban environments; (2) an EMI threshold of −35dBm/m2 peak power density from the nearby radar; and (3) damage to 5G networks calculated at a threshold of +35dBm/m2 peak power density from the nearby radar. In the event that the DoD modifies its use in any existing Cooperative Planning or Periodic Use Area so as to decrease the size of such area, the Commission delegates authority to the Wireless Telecommunications Bureau and the Office of Engineering and Technology, in coordination with NTIA, to reflect such smaller areas in its rules. In this regard, the Commission notes that the existing Cooperative Planning and Periodic Use Areas identified by the rules adopted in the *Second Report and Order* cannot be increased in size, and no Cooperative Planning Area or Periodic Use Area not so identified can be added in the contiguous United States.

In general, 3.45 GHz Service licensees will be able to operate within each Cooperative Planning Area, but may need to plan their network layout, choose power levels and antennas, and install filters and shielding, to maximize flexible use of the band, consistent with operator-to-operator agreements they enter into with DoD operators. In certain locations, the DoD operates high-powered radars. Flexible-use licensees must accept interference from these high-powered DoD radars within the Cooperative Planning and Periodic Use Areas, unless the operators are able to reach an agreement that provides additional assurances or protections to each operator. NTIA recommends that ''to the extent that higher power DoD radars located at the CPAs [Cooperative Planning Areas] labeled in [part 2, appendix A of the Commission's rules] may cause harmful interference to commercial operations within these zones, . . . DoD and licensees [should] include in coordination agreements language that acknowledges the risks of harmful interference inside of these zones (along the lines set forth in the AWS–3 coordination agreement template).'' Letter from Charles Cooper, Associate Administrator, NTIA, to Ronald T. Repasi, Acting Chief, OET, FCC and Joel Taubenblatt, Acting Chief, WTB, FCC, WT Docket No. 19–348, at 4 (filed Feb. 19, 2021) (NTIA 2021 *Ex Parte* Letter). In other areas where the DoD operates low-power radars, the Commission expects that the DoD will coordinate with flexible-use licensees for an agreeable path forward. An operator-to-operator agreement could include network deployment plans that minimize impacts on DoD operations, while enabling the widest flexible-use deployments possible. The Commission notes that, unless the entire 3.45 GHz

Service licensed area falls within a Cooperative Planning Area or Periodic Use Area, cooperative sharing will only take place in those portions of a licensee's geographic licensed area that fall within the defined boundaries of a Cooperative Planning Area or Periodic Use Area, and not across the entire licensed area. In other words, outside of the defined boundaries of the Cooperative Planning Area or Periodic Use area, the 3.45 GHz Service licensee will have unencumbered use of the band.

The Commission reiterates that the Cooperative Planning and Periodic Use Areas are not exclusion zones, because licensees will be permitted to operate in these areas subject to the coordination requirements, and these zones were developed based on the Commission's proposed power limits and assuming relatively high antenna heights. In practice, the Commission expects that the areas in which flexible-use licensees may need to adjust their networks will be smaller than the areas encompassed by the Cooperative Planning and Periodic Use Area boundaries the Commission is adopting. First, actual flexible-use operations are likely to use lower towers and lower power than the maximum tower heights and power levels permitted under the Commission's rules, which NTIA and the DoD used in their analyses to generate the Cooperative Planning Areas and Periodic Use Areas. NTIA expects that this ''should result in greater industry access to the spectrum in and around the CPAs and PUAs [Periodic Use Areas].'' NTIA 2021 *Ex Parte* Letter at 3. Second, non-Federal licensees can coordinate with Federal users and enter into operator-to-operator agreements so that new commercial operations would not interfere with protected incumbent Federal systems, or so that any risk of harmful interference to non-Federal operations is mitigated so long as the non-Federal users are operating pursuant to the agreement. For example, as NTIA notes, the DoD could agree to not activate a PUA if a mutually agreeable technical interference mitigation approach is identified. Absent an operator-to-operator agreement permitting more extensive use within a Cooperative Planning or Periodic Use Area, a 3.45 GHz Service licensee must protect Federal incumbents against harmful interference within the area parameters denoted in the table in footnote US431B of § 2.106 of the Commission's rules.

Fort Bragg and Little Rock.—In all but two of the Cooperative Planning and Periodic Use Areas, 3.45 GHz Service licensees must coordinate with the DoD across all 100 megahertz of the spectrum within the areas. In the Fort Bragg, North Carolina, Cooperative Planning Area and Periodic Use Area, in contrast, licensees will only need to coordinate in the lower 40 megahertz of the band, *i.e.,* between 3450–3490 MHz. NTIA indicates that the DoD will only use the lower 40 megahertz of the band in this area, leaving the upper 60 megahertz unencumbered and available for full-power, flexible-use operations in accordance with the rules adopted herein. Thus, licensees in the upper portion of the band, *i.e.,* between 3490–3550 MHz, need not coordinate with the DoD in these areas.

In the Little Rock, Arkansas Cooperative Planning Area, for approximately the first 12 months following the close of the auction for this band, licensees will have to coordinate with the DoD across all 100 megahertz of the spectrum within those areas. After this time period, however, licensees will only need to coordinate in the lower 40 megahertz of the band, as the DoD states that it will vacate the upper 60 megahertz, *i.e.,* between 3490–3550 MHz, by that time.

Federally Authorized Contractor Test Facilities.—Consistent with the *FNPRM* and with NTIA authorizations, Federally Authorized Contractor Test (FACT) facilities that operate within a Cooperative Planning Area or Periodic Use Area pursuant to a NTIA authorization will be treated the same as other Federal facilities within such areas. NTIA authorizes radio stations belonging to and operated by the United States. To the extent that NTIA has authorized such stations to operate within a FACT, those operations should be entitled to the same protections as other Federal operations within Cooperative Planning Areas or Periodic Use Areas, consistent with their NTIA authorizations.

In this context, the Aerospace Industries Association asks the Commission to refine its coordination requirements to include protection for future non-Federal experimental operations at facilities located within Cooperative Planning Areas, as well as experimental operations at the small number of non-Federal facilities that are located outside of Cooperative Planning Areas. The Aerospace Industries Association also asks that the Commission impose coordination obligations for non-Federal test facilities wholly located within Cooperative Planning Areas. Further, the Aerospace Industries Association asks that a coordination process be created either by the National Defense Industrial Association Spectrum Working Group or the Commission to coordinate operations at testing facilities not wholly located within Cooperative Planning Areas. NTIA notes that several radar manufacturing and integration facilities require access to the 3.45 GHz band to perform experimentation and testing for radionavigation and other systems contracted for by Federal agencies. According to NTIA, these facilities typically operate outdoors to accommodate physically large operational systems and NTIA states that these facilities must retain access to the spectrum for testing and experimentation to ensure that agencies' contracting requirements can be fulfilled. NTIA requests that the Commission continue to work with NTIA, the DoD, and other concerned stakeholders to develop a coordination framework to ensure that these non-Federal experimental licensees in the 3.45 GHz band are able to continue to access spectrum to support their critical functions in support of the DoD, in a way that minimizes potential impacts to the 3.45 GHz Service.

The Commission recognizes that the DoD has expended significant time and resources to craft limited Cooperative Planning Areas or Periodic Use Areas that maximize new commercial operations while still allowing effective mission-critical DoD uses. While the DoD's calculations and assessments do not consider future operations by non-Federal radiolocation experimental licensees within or outside these areas, the Commission agrees that these contractor facilities have needs to access the spectrum for testing and experimentation as the Commission has recognized in authorizing various part 5 experimental authorizations. Protection of such operations by rule is outside the scope of the AMBIT efforts. Further, expanding protection to future non-Federal operations at FACT facilities would create uncertainty for potential bidders considering commercial deployments in the band. The Commission notes, however, that non-Federal entities will continue to be able to obtain experimental licenses for such testing under its part 5 rules, which limit experimental use to operations on a non-interference basis and generally require licensees to notify or coordinate with incumbent spectrum users to avoid causing harmful interference. Accordingly, the Commission does not extend coordination obligations on commercial licensees for existing or future non-Federal radiolocation operations authorized under part 5 of the rules regardless of whether they are located either inside or outside of

Cooperative Planning Areas or Periodic Use Areas. The Commission expects all future commercial licensees to cooperate with part 5 licensees when presented with requests for experimentation and testing in the 3.45 GHz band to enable continued development and upgrades of essential DoD systems. Moreover, the Commission encourages all stakeholders to work with the National Defense Industrial Association Spectrum Working Group to develop mutually agreeable practices regarding experimental use of the band for defense radar testing and development. The Commission will monitor the results of this approach and may revisit it as necessary based on the experience of experimental and 3.45 GHz Service licensees. To that end, the Commission encourages parties to provide the Commission with information on this approach if needed.

2. National Emergencies

In light of NTIA's February 2021 letter stating that no specific provision in US431B is needed for Federal use during time of national emergency, the Commission does not adopt such a provision. The Commission agrees with NTIA that section 706(c) of the Communications Act and other relevant authorities provide sufficient ability for the DoD to access the band in the extraordinary circumstances under which a national emergency might necessitate access to the 3.45 GHz band. Accordingly, the Commission need not modify the existing regulatory framework that applies generally to all bands in this regard.

In the *FNPRM,* the Commission, noting that the DoD may require access to the band during times of national emergency to fulfill military operational needs, proposed that Federal users should be authorized to operate within the band pursuant to existing radiolocation authorizations as required to meet operational mission requirements during national emergencies. Numerous commenters ask that the Commission clearly delineate the boundaries of this use and any related coordination procedures.

In response to these comments and upon further review of this issue, NTIA and the DoD now agree that a specific national emergency provision in footnote US431B is not necessary. The Commission agrees with this assessment. Instead of imposing a specific provision for national emergencies, in the extremely rare circumstances under which such operational needs may arise, NTIA states that such operational needs can be accommodated in the 3.45 GHz band (as well as other bands) under and consistent with section 706(c) of the Communications Act and other relevant authorities. Under section 706(c), a national emergency would be triggered by a ''proclamation by the President that there exists a war or threat of war or a state of public peril or disaster or other national emergency.'' 47 U.S.C. 606(c). While similar language was proposed by NTIA for footnote US431B to the Table of Allocations, NTIA now states that this band-specific provision in an allocation footnote is not required in light of existing statutory authorities.

The Commission agrees with commenters and NTIA that a band-specific national emergency provision in US431B is not required and accordingly, it will not adopt the prior proposal in this regard. The Commission reminds future 3.45 GHz Service licensees, however, that pursuant to section 309(h) of the Communications Act, every FCC license shall be subject in terms to the right to use or control conferred by section 706 of this Act. Similarly, nothing under the Commission's auction authority or in the use of competitive bidding shall limit or otherwise affect the requirements of section 309(h), section 706, or any other relevant provisions of the Communications Act. Although NTIA recognizes prospective bidders' need for adequate information to assess risks and prepare business plans for the band, it acknowledges that it would be difficult to provide absolute certainty and predictability regarding the situations under which section 706 (or other authorities) might be invoked. Nonetheless, NTIA notes that additional information may be provided through upcoming workshops or other appropriate venues.

3. Coordination Procedures

Before a commercial licensee commences operations in a Cooperative Planning Area or Periodic Use Area, it must first successfully coordinate with the Federal incumbent. The purpose of coordination is to facilitate shared use of the band in these specified areas and during specified time periods. The coordination procedures outlined here will apply to all 3.45 GHz Service licensees seeking to operate in a Cooperative Planning Area or Periodic Use Area, unless the 3.45 GHz Service licensee and the DoD have reached a mutually agreeable coordination arrangement that provides otherwise. Such arrangements could, for example, document specific notification and activation procedures. While the Commission provides a general description of these procedures here, additional coordination requirements, procedures, and scenarios may be developed, consistent with any Administrative Procedure Act or other legal requirement that may apply, in future public notices, specific operator-to-operator agreements, or other mechanisms. The Commission expects 3.45 GHz Service licensees and Federal incumbents to negotiate in good faith throughout the coordination process (*e.g.,* sharing information about their respective systems and communicating results to facilitate commercial use of the band).

Contact.—The DoD will create an online portal through which a 3.45 GHz Service licensee must initiate formal coordination requests for its relevant systems within associated Cooperative Planning Areas and/or Periodic Use Areas. In addition, according to NTIA, an Incumbent Informing Capability (IIC) also could be developed to facilitate coordination within the Periodic Use Areas. The DoD would use the IIC to schedule the time and frequency span for each episodic use.

Informal Discussions.—Before a 3.45 GHz Service licensee submits a formal coordination request, it may share draft proposals or request that Federal incumbent coordination staff discuss draft coordination proposals. These discussions are voluntary, informal, and non-binding and can begin at any time. 3.45 GHz Service licensees may discuss their proposed deployments and seek guidance on appropriate measures to ensure that electromagnetic compatibility (EMC) analyses produce positive results. 3.45 GHz Service licensees and Federal representatives also may develop an analysis methodology that reflects the characteristics of licensees' proposed deployments and the Federal incumbents' operation. These discussions also can involve developing a process for identification and resolution of interference.

Informal discussions are intended to allow the Federal incumbent and 3.45 GHz Service licensee to share information about their respective system designs and to identify potential issues before a formal coordination request is submitted through the DoD online portal. The Federal incumbents involved, unless they specify otherwise in writing, would not be committing to any final determination regarding the outcome of the formal coordination. The Commission strongly encourages parties to use informal, non-binding discussions to minimize or resolve basic methodological issues upfront, before having the 3.45 GHz Service licensees

submit formal coordination requests. Federal incumbents' transition plans will identify a point of contact that a licensee may contact to initiate informal discussions.

Formal Coordination.—Coordination shall be initiated by the 3.45 GHz Service licensee by formally requesting access to operate within a Cooperative Planning Area and/or Periodic Use Area. This request should be made directly through the DoD online portal. The 3.45 GHz Service licensee must set up its portal account and, once established, the 3.45 GHz Service licensee will receive a user guide and training on the use of the portal and, if applicable, the IIC.

Initiation, Timing, and Affirmative Concurrence.—Unless otherwise agreed between a 3.45 GHz Service licensee and the relevant Federal incumbent, no formal coordination requests may be submitted until nine (9) months after the date of the auction closing Public Notice. 3.45 GHz Service licensees may request informal discussions during this nine-month time period, however, using the point of contact identified in the applicable Transition Plan.

After the first nine (9) months following the close of the auction, the Commission expects that NTIA will require Federal incumbents to review and respond to formal coordination requests made through the portal in a timely manner. The Commission encourages licensees and incumbents, through informal discussions, to prioritize formal coordination requests as appropriate to avoid an overwhelming influx of coordination requests at the conclusion of the nine (9) month quiet period. This will help maximize the quick and efficient review of coordination requests.

Unless otherwise agreed to in writing, the requirement to reach a coordination arrangement is satisfied only by obtaining the affirmative concurrence of the relevant Federal incumbent(s) via the portal. This requirement is not satisfied by omission. The Commission expects that contact information and further details on Federal notification and coordination requirements will be included in a future public notice jointly issued by the Commission and NTIA.

Submission Information.—To submit a formal coordination request, the 3.45 GHz Service licensee must include information about the technical characteristics for its base stations and associated mobile units relevant to operation within the Cooperative Planning Area and/or Periodic Use Area. This information should be provided in accordance with the instructions provided in the DoD's online portal user's guide. The Commission expects that the data fields in the portal will include basic technical operating parameters (*e.g.,* system technology, mobile EIRP, frequency block, channel bandwidth, site name, latitude, and longitude). The Commission also anticipates that the portal will accept attachments that include narratives that explain area-wide deployments.

3.45 GHz Service licensees must prioritize their deployments in the Cooperative Planning Area and/or Periodic Use Area for each Federal incumbent when submitting a formal coordination request. If a licensee is seeking to coordinate with multiple systems or multiple locations of operation controlled by one Federal incumbent, it must specify the order in which it prefers the Federal incumbent process the request (*i.e.,* the order of systems or geographic locations).

Coordination Analysis.—If a 3.45 GHz Service licensee has questions about the result of a coordination request, it may contact the Federal incumbent to propose network design modifications to help address EMC issues raised by the Federal incumbent. The Federal incumbent, where feasible, may review revised technical proposals from the 3.45 GHz Service licensee. Once the 3.45 GHz Service licensee has revised its network design, it must resubmit a formal coordination request, and the 3.45 GHz Service formal coordination process begins again.

The Commission stresses the benefits of informal discussions among 3.45 GHz Service licensees and Federal incumbents, including during the formal coordination process. While in many cases, Federal incumbent staff may be unable to provide specific information about the protected Federal operations and are not responsible for designing the 3.45 GHz Service system, they may offer some suggestions on how to address or mitigate the issue, given the limited information that can be made available on some Federal systems.

Dispute Resolution.—If disputes arise during the coordination process, the Commission strongly encourages parties to negotiate in good faith to resolve them. If a 3.45 GHz Service licensee believes that a Federal incumbent is not negotiating in good faith, the licensee may seek the assistance of NTIA or it can inform the Commission. If a Federal incumbent believes that a 3.45 GHz Service licensee is not negotiating in good faith, it could nonetheless timely respond to a formal request and would have the option to seek assistance from NTIA and/or the Commission. The Commission encourages parties to enter into operator-to-operator agreements that have dispute resolution provisions for any or all possible disputes. If a dispute arises between an incumbent Federal entity and a 3.45 GHz Service licensee over an operator-to-operator agreement, provisions calling for informal negotiation, mediation, or non-binding arbitration efforts between the parties will help to clearly define and narrow the issues for formal agency resolution by NTIA, the Commission, or both agencies acting jointly, as applicable.

Sharing of Sensitive and Classified Information.—Given the classified and sensitive nature of some of the information to be shared by the DoD for effective coordination in the band, the Commission expects that NTIA and the DoD will develop procedures, methods, and means for sharing such information (*e.g.,* through the ''Trusted Agent'' process).

Notification Procedures for Periodic Use Areas.—The Commission anticipates that NTIA will establish notification procedures to govern the DoD's required episodic access to the 3.45 GHz band in Periodic Use Areas. Specifically, the Commission expects that the 3.45 GHz Service licensee(s) and the Federal incumbent will establish operator-to-operator agreements that detail notification processes and timelines prior to the initiation of commercial operations within the Periodic Use Area. The operator-to-operator agreement could, for example, specify the notification process, content, and timelines (*i.e.,* the starting and ending dates and times of such use). The agreements also may specify that the 3.45 GHz Service licensee(s) and the Federal incumbent may use a scheduling tool to complete the notification process or agree to technical limitations to commercial operations (*e.g.,* reduced power levels and antenna pointing angles in lieu of a notification process). The Commission believes that this approach will provide maximum flexibility for the 3.45 GHz Service licensee and the Federal incumbent to develop tailored solutions.

Interference Resolution Process.—The introduction of non-Federal, flexible-use licenses increases the possibility that interference will occur between the new entrants and incumbent Federal users. As reflected in the new footnote US431B to the Table of Allocations, flexible-use licensees in both types of coordination areas (Cooperative Planning Areas and Periodic Use Areas) must not cause harmful interference to Federal users, and Federal users should

minimize the operational impact on non-Federal users. Furthermore, 3.45 GHz Service licensees cannot claim interference protection within the coordination areas, absent an operator-to-operator agreement that specifies otherwise. In instances of identified harmful interference occurring between a Federal and non-Federal operator not addressed by the coordination procedures or operator agreements, the 3.45 GHz Service licensee shall first attempt to resolve the interference directly. If that effort is unsuccessful, the 3.45 GHz Service licensee, if adversely affected, may escalate the matter to the Commission.

Future Workshops and Workbooks.—Commenters widely support the use of workshops to collaborate and coordinate between industry stakeholders and the DoD. NTIA states that it will work with the DoD will make additional information available via a variety of means, including the posting of approved transition plans and a workbook similar to the DoD's AWS–3 Workbook, as well as through upcoming workshops. According to NTIA, such supplemental information will likely include updates on the coordination portal and IIC developments and procedures, as well as guidance on anticipated received power levels from the DoD's high-powered operations, methods and means for sharing proprietary and classified information (*e.g.,* through ''Trusted Agents''), and descriptions of potential national emergency scenarios.

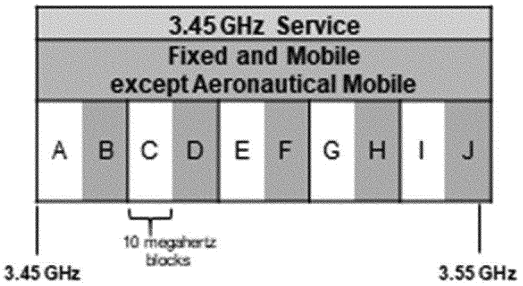
Federal use of the radio spectrum is generally governed by NTIA while non-Federal use is governed by the Commission. Accordingly, NTIA and the Commission may decide that jointly issued further guidance or details concerning Federal/non-Federal coordination, particularly Federal aspects of such coordination is warranted. Such guidance could consist of additional coordination procedures, coordination timelines, notice of complete or incomplete submissions, coordination analysis, and streamlined coordination options. In this regard, to the extent needed, the Commission delegates authority to the Wireless Telecommunications Bureau to work with NTIA staff, in collaboration with affected Federal agencies, to develop a joint FCC and NTIA public notice with additional information on notification and coordination procedures in the 3.45 GHz band as proposed in prior Notices in this proceeding and outlined in the *Second Report and Order.*

C. Band Plan

1. Block Sizes

In the *FNPRM,* the Commission proposed to license the 3.45 GHz band in 20 megahertz blocks to promote efficient and robust use of the band for next-generation wireless technologies, including 5G. The Commission remains committed to that goal, but believes that 10 megahertz blocks will promote wider participation in the 3.45 GHz auction, and will encourage competition in the 3.45 GHz Service while still enabling the deployment of these next-generation wireless services. The Commission also believes this band plan, combined with its decision to license the 3.45 GHz band by partial economic areas (PEAs), strikes the appropriate balance between the 3.7 GHz band, licensed by PEAs in 20 megahertz blocks, and the Citizens Broadband Radio Service, where Priority Access Licenses are licensed by counties in 10 megahertz blocks. The Commission therefore adopts 10 megahertz as the channel size for the 3.45 GHz band in lieu of its proposal of 20 megahertz channels. The Commission will designate these 10 megahertz blocks as A through J, and they will be licensed according to the following channel plan:

Figure 1: Band Plan



The Commission finds that, for this band, 10-megahertz blocks will best serve its dual goals of making 3.45 GHz spectrum accessible to a diverse array of entities while also enabling licensees to obtain sufficient spectrum rights for deploying wideband networks. Carriers will be free to aggregate up to four channels in the 3.45 GHz band to achieve wider blocks as needed to enable their deployments, while others may choose to use only 10 megahertz channels. The Commission finds that 10 megahertz blocks strike the appropriate balance among minimizing coordination issues, maximizing wide-band services, and increasing competition in the band.

2. Spectrum Block Configuration

Unpaired Channels.—The Commission adopts its proposal to allocate the 3.45 GHz band on an unpaired basis to promote a consistent spectral environment with the adjacent 3.5 GHz and 3.7 GHz bands, which are also unpaired in the United States. In contrast to a paired channel configuration that assumes frequency division duplex operations, an unpaired spectrum configuration is technology neutral—it thus enables Time Division Duplex (TDD) operations, which has become increasingly prevalent in deployments of digital broadband networks. In light of this, the Commission in recent years has licensed spectrum used for mobile broadband services on an unpaired basis. This more recent approach is consistent with industry standards and supported by the record. The Commission therefore adopts unpaired channels for this band.

TDD Synchronization.—The Commission recognizes the benefits to all operators that come from TDD synchronization both within and across bands. To minimize the potential for causing or receiving harmful interference while maintaining deployment flexibility and efficiency, the Commission encourages intra-band synchronization where possible and it requires that 3.45 GHz Service licensees

negotiate in good faith with requesting Citizens Broadband Radio Service operators to enable TDD synchronization across these services.

Specifically, a Citizens Broadband Radio Service operator may request information from a 3.45 GHz Service licensee to enable cross-service TDD synchronization if the Citizens Broadband Radio Service operator provides service, or intends to provide service, in the same or adjacent geographic area as that of the 3.45 GHz Service licensee. A request by a Citizens Broadband Radio Service operator for TDD synchronization will obligate the 3.45 GHz Service licensee to provide sufficient technical information to allow the Citizens Broadband Radio Service operator to synchronize its system with the 3.45 GHz band system and to keep such information current if its network operations change. Negotiations over the information to be provided must be conducted in good faith, with the goal of enabling synchronization between the relevant systems; but there is no obligation on the 3.45 GHz Service licensee to make any changes to its operations or proposed operations. Parties are free to negotiate changes to either or both networks as part of their efforts. Commission staff will be available to assist with negotiations as needed to resolve disputes and ensure good faith cooperation. The Commission similarly encourages industry to keep the Commission apprised of the effectiveness of the good faith requirement adopted, and it may revise further this rule or the rules governing the Citizens Broadband Radio Service in a future proceeding if necessary to encourage further TDD synchronization efforts among the various services in its mid-band allocations.

In order to streamline these negotiations and reduce the administrative burdens on 3.45 GHz Service operators, the Commission encourages industry to develop collaborative means of sharing necessary information among licensees and operators. For example, Spectrum Access System administrators may be well-positioned to assist in this effort because they will be collecting extensive data on Citizens Broadband Radio Service operations in order to fulfill their duties. These administrators may be able to act as a clearinghouse for information necessary to effect synchronization. The Commission similarly expects industry to determine the information necessary for such synchronization efforts in order to protect proprietary information of all parties and to facilitate maximum flexibility on the part of licensees, while still ensuring that the interference mitigation objectives of synchronization are achieved. The Commission also encourages industry to identify for the Commission any challenges they face in negotiations.

The Commission declines at this time to take the additional step of requiring TDD synchronization between networks operating in this band and those in the adjacent Citizens Broadband Radio Service, as some commenters suggest. Mandated synchronization could undermine operator flexibility in determining the best use of this spectrum, especially as use-cases and technologies change over time. While the Commission takes seriously the need to protect operations in the adjacent Citizens Broadband Radio Service from new high-powered uses, it believes the framework it adopts will accomplish that goal while preserving operator flexibility. However, the Commission will monitor the results of this approach, and may revisit it as necessary based on the experience of operators. To that end, the Commission encourages parties to continue to provide the Commission with information on this approach.

Guard Bands.—The 3.45 GHz band will be situated between two active bands. At the upper edge of the band, the Citizens Broadband Radio Service operates in the 3.55–3.7 GHz band, and Federal incumbents use the 3.55–3.65 GHz band. At the lower edge of the band, the primary allocation for Federal radiolocation operations will continue below 3.45 GHz. As discussed below, the Commission finds that adoption of the technical rules the Commission proposed in the *FNPRM* as modified herein will sufficiently protect adjacent operations at both edges of the band. No commenters support the use of guard bands in this band and the Commission declines to create guard bands here.

D. Technical Issues

1. Power Levels

Base Station Power.—To support robust deployment of next-generation mobile broadband services, the Commission in the *FNPRM* proposed to allow base stations in non-rural areas to operate at an effective isotropic radiated power (EIRP) of up to 1640 watts per megahertz. In addition, consistent with other broadband mobile services in nearby bands (*e.g.,* AWS–1, AWS–3, and AWS–4, personal communications services (PCS), and 3.7 GHz), the Commission proposed to permit base stations in rural areas to operate with double the non-rural EIRP limit, with a maximum of 3280 watts per megahertz. Further, the Commission proposed, consistent with the rules adopted in the 3.7 GHz Service, that the adopted power spectral density limit would apply to emissions of all bandwidths, including those of less than one megahertz, to facilitate uniform power distribution across a licensee's authorized band regardless of whether it deploys wideband or narrowband technologies. In the *Second Report and Order,* the Commission adopts these proposals. Because advanced antenna systems often have multiple radiating elements in the same sector, these power limits will apply to the aggregate power of all antenna elements in any given sector of a base station, as proposed in the *FNPRM.* The Commission finds that these power levels will provide licensees with the flexibility to optimize their network designs for wide-area coverage while still enabling successful coexistence with incumbent and adjacent band operations.

While the Commission agrees that the asymmetry in power levels between the 3.45 GHz Service and the Citizens Broadband Radio Service creates the potential for harmful interference, it finds that the protection mechanisms it adopts, including the out-of-band emissions limits adopted below, will minimize such interference. In particular, the Commission believes that harmful interference can be avoided through careful network planning and coordination among spectrum users, including through the requirement it adopts that 3.45 GHz Service licensees negotiate in good faith regarding requests from Citizens Broadband Radio Service users for technical information necessary to enable TDD synchronization among radio systems. The Commission expects operations in both bands to be diverse and complex, stemming from the use of unpaired blocks resulting in downlink and uplink occurring on the same frequencies, as well as dynamic access in the Citizens Broadband Radio Service. This means that base station power reductions to prevent intra- and inter-service interference will be commonplace, regardless of overall power limits imposed by the Commission. As a result, coordination between users within and across bands will be required for successful coexistence and efficient operation of systems in both bands. Such coordination will also facilitate continued effective environmental sensing capability (ESC) operation in and near a 3.45 GHz Service licensee's license area.

The Commission expects 3.45 GHz Service licensees and Citizens Broadband Radio Service licensees,

Spectrum Access Systems, and ESCs to work together to ensure coexistence among systems at the edge of the band. Because the reliable operation of ESCs is essential to enabling spectrum access for licensees of the Citizens Broadband Radio Service, ESCs are subject to protection from harmful interference from adjacent-channel operations as licensee operations. Harmful interference caused to ESC operations will be considered harmful interference to a primary service under the Commission's rules and dealt with accordingly.

Mirroring the approach adopted for the 3.7 GHz Service, the Commission also proposed to extend the same power spectral density limit to emissions with a bandwidth less than one megahertz to facilitate uniform power distribution across a licensee's authorized band regardless of whether wideband or narrowband technologies are deployed. The Commission finds that this EIRP limit allows for flexibility in measurement, permitting testers to measure conducted power and apply the relevant antenna gain adjustment, as well as direct over-the-air EIRP measurement. This is consistent with how equipment certification testing is performed in other bands.

Mobile Power.—The Commission adopts a 1 Watt (30 dBm) EIRP power limit for mobile devices, as proposed in the *FNPRM* and as adopted for the 3.7 GHz Service. The record is largely unanimous in supporting the proposal to align the mobile power limit for the 3.45 GHz Service with those of the 3.7 GHz Service. For the same reasons that the Commission adopts its proposed higher power levels in the case of base station power, it does so for mobile devices as well.

The Commission finds that this mobile power limit will provide an adequate range for operation of different mobile and fixed broadband deployments across a wide variety of use cases. Additionally, this limit will permit operation of mobile power classes as outlined in the 3GPP standards. The Commission also believes a 1 Watt limit is more appropriate for the 3.45 GHz Service than the lower limits imposed in the Citizens Broadband Radio Service due to the expected wider channels and the increased use of advanced antenna systems. As with base station power limits, the Commission believes that providing consistency between mobile 5G deployments in the 3.45 GHz Service and other bands that will be used for these operations is crucial for the band to reach its full potential. Given that mobile stations typically have low duty cycles and are power controlled by their base stations, the effect of mobile operations in the 3.45 GHz Service on operations in the Citizens Broadband Radio Service should be not be significant.

2. Out-of-Band Emissions

Base Station Out-of-Band Emissions.—The Commission adopts base station out-of-band emission (OOBE) requirements based on the proposed limits from the *FNPRM,* which are similar to those in the AWS services and the 3.7 GHz Service. Specifically, base stations will be required to suppress their emissions beyond the edge of their authorization to a conducted power level of −13 dBm/MHz. Commenters support this proposal.

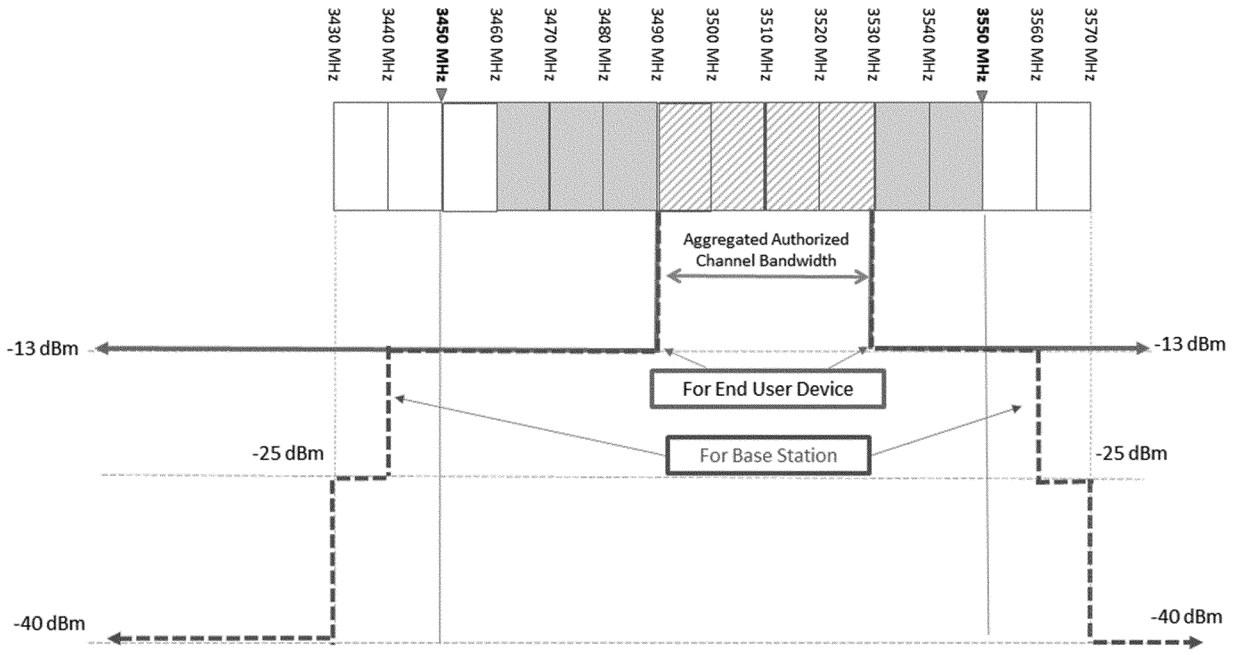
Further, the *FNPRM* proposed a requirement that 3.45 GHz Service base stations meet an additional two-step limit of −25dBm/MHz and −40dBm/MHz at the upper and lower band edges. These limits are consistent with the OOBE limits specified for the Citizens Broadband Radio Service (as implemented for 3GPP band n48). As the Commission noted in the *FNPRM,* these OOBE limits are intended to ensure effective coexistence with mission-critical Federal and other non-Federal services operating in the adjacent bands. The Commission adopts a two-step limit, but modify it slightly from the original proposal.

Specifically, in addition to the OOBE limits within the 3.45 GHz band, the following limits will apply:

- Equal or less than −13 dBm/MHz limit from edge of the band to 10 megahertz down (3440 MHz) and up (3560 MHz);
- Equal to or less than −25 dBm/MHz beyond the 10 megahertz offset from the band edge between 3440 and 3430 megahertz and between 3560 and 3570 megahertz;
- Equal to or less than −40 dBm/MHz below 3430 megahertz and above 3570 megahertz.

We summarize the Commission's final approach in Figure 2 below.

Figure 2: Emissions Mask



The Commission will continue to engage with NTIA and other Federal partners, as well as other stakeholders, on whether there are opportunities to relax this approach while still providing sufficient protection to incumbent users. Moreover, the Commission's decision is specific to the 3.45 GHz band and it takes no position on whether the two-step limit adopted here will be required to protect incumbent users in any future proceedings.

Further, while the Commission acknowledges the concerns raised by some commenters about the impact of OOBE on ESCs in the Citizens Broadband Radio Service, it believes the lower emissions limits adopted will sufficiently protect ESC operations.

Mobile Out-of-Band Emissions.—As with base station OOBE limits, the Commission adopts mobile emission limits similar to its standard emission limits that apply to mobile services. Specifically, mobile units must suppress the conducted emissions to no more than −13 dBm/MHz outside their authorized frequency band. Most commenters agree with the proposed OOBE limits for mobile stations. The Commission finds that stricter limits, such as those used in Citizens Broadband Radio Service to protect the FSS incumbents, are not warranted here because the impact of mobile stations on both commercial and Federal systems in adjacent bands should be insignificant.

Emission Measurement.—For determining OOBE, the Commission applies the part 27 measurement procedures and resolution bandwidth that are used for AWS devices outlined in § 27.53(h), with a slight refinement. Specifically, a resolution bandwidth of 1 megahertz or greater will be used, except in the 1 megahertz bands immediately outside and adjacent to the licensee's frequency block where a resolution bandwidth of at least 1% of the emission bandwidth may be employed. The Commission refines the measurement procedure to specify the use of a resolution bandwidth such that, at the 1 megahertz bands immediately outside and adjacent to the licensee's frequency block, a resolution bandwidth of at least 1% of the emission bandwidth—but limited to a maximum of 200 kilohertz—may be employed.

3. Measures To Minimize Effects on Adjacent Channel Operations

Protection of Ongoing Federal Operations in the 3.55–3.65 GHz Band.—As the Commission noted in the *FNPRM,* the new 3.45 GHz Service will be adjacent to Federal inland and shipborne radar operations in the 3.55–3.65 GHz portion of the 3.5 GHz band. Because these Federal systems often operate in a mobile manner, the Cooperative Planning Area and Periodic Use Area model the Commission adopts for in-band interference mitigation will not be effective at providing protection to ongoing Federal operations in the adjacent 3.5 GHz band.

The Commission believes that the OOBE limits it adopts above will provide significant protection from harmful interference for these operations, but that additional measures may be necessary to ensure that flexible-use operations at the upper edge of the 3.45 GHz band do not cause harmful interference to these critical Federal operations, particularly in the form of aggregate interference. For that reason, the Commission sought comment in the *FNPRM* on whether additional protection measures are necessary.

Given the uncertainty and need for licensee cooperation with Federal users, the Commission believes that the best way to address this issue will be through the workshops between the DoD and industry, as well as through the ongoing coordination efforts that will arise from those workshops. The Commission anticipates that these flexible, collaborative discussions will lead to the development of the most innovative and least burdensome methods for preventing harmful interference to adjacent Federal operations, balancing deployment flexibility and reliability.

Protection of Ongoing Federal Operations below 3.45 GHz.—The Commission expects that dynamic spectrum use by Federal users will

continue below 3.45 GHz in the form of airborne, shipborne, and ground-based radars. As with protection of radar systems in the 3.55–3.65 GHz band, the Commission believes interference mitigation for DoD systems below 3.45 GHz is best handled as part of future workshops and active coordination efforts between industry and the DoD, rather than through proscriptive rules adopted at this stage.

4. Other Technical Rules

Field Strength Limit and Market Boundaries.—As proposed in the *FNPRM,* the Commission adopts the −76 dBm/m2/MHz power flux density (PFD) limit—at a height of 1.5 meters above ground—at the border of the licensees' service area boundaries, and it also permits licensees operating in adjacent geographic areas to voluntarily agree to higher levels at their common boundaries.

Antenna Height Limits.—Consistent with the proposal in the *FNPRM,* the Commission will not restrict antenna heights for 3.45 GHz band operations beyond the requirements necessary to ensure physical obstructions do not impact air navigation safety. This approach is consistent with part 27 AWS rules, which generally do not impose antenna height limits on antenna structures, and is supported by the record.

Rather than using antenna height limits to reduce interference between mobile service licensees, as has been done in the past, the Commission more recently has used field strength limits at service boundaries to provide licensees more flexibility to design their systems while still ensuring harmful interference protection between systems. As this has proven successful in other services, the Commission adopts that same approach in the 3.45 GHz Service. Further, the Commission believes that such limits would have limited practical effect because it expect that licensees generally will deploy systems predicated on lower tower heights and increased cell density, in order to achieve maximum 5G data throughput to as many consumers as possible. In rural areas where higher antennas may be used to provide longer range to serve sparse populations, the field strength limit at service area boundaries the Commission adopts here will ensure that adjacent area licensees are protected from harmful interference; licensees wishing to use higher antennas must ensure that they do not exceed these limits and cause harmful interference to other licensees. The Commission notes, however, that antenna heights may need to be reduced as part of coordination within Cooperative Planning Areas and Periodic Use Areas in order to protect Federal operations.

Canadian and Mexican Coordination.—The Commissions adopt the proposal from the *FNPRM* to apply § 27.57(c) of the Commission's rules to this band, which requires all part 27 operations to comply with international agreements for operations near the Mexican and Canadian borders. This requirement is consistent with all other part 27 services. Under this provision, licensed operations must not cause harmful interference across the border, consistent with the terms of the international agreements currently in force. The Commission notes that modification of the existing rules might be necessary in order to comply with any future agreements with Canada and Mexico regarding the use of these bands.

General Part 27 Rules.—As proposed in the *FNPRM,* the Commission applies all general part 27 rules to all 3.45 GHz Service licenses, including those acquired through partitioning or disaggregation. Specifically, the Commission applies to the 3.45 GHz Service §§ 27.51 (equipment authorization), 27.52 (RF safety), 27.53(i) (protection of adjacent channels), 27.54 (frequency stability), 27.56 (antennas structures; air navigation safety), and 27.63 (disturbance of AM broadcast station antenna patterns). The record supports this decision, and the application of these general wireless service rules will further the standardization of the 3.45 GHz Service with other commercial wireless services and promote cross-band operability in order to ensure a robust equipment market for licensees and streamline regulatory compliance.

As the Commission has done for other bands governed by part 27 services since 2014, the Commission also requires client devices to be capable of operating across the entire 3.45 GHz band. Specifically, the Commission adds the 3.45 GHz band to § 27.75 of its rules, which requires mobile and portable stations operating in the other flexible-use wireless bands to be capable of operating across the entire relevant band using the same air interfaces that the equipment uses on any frequency in the band. This requirement does not require licensees to use any particular industry standard.

E. Licensing and Operating Rules; Regulatory Issues

As required by the Beat CHINA for 5G Act of 2020, and as part of the Commission's broader comprehensive mid-band strategy to advance 5G networks, the Commission generally aligns the licensing and operating rules for the 3.45 GHz Service with other flexible-use services under the part 27 rules. If and when areas outside the contiguous United States are made available by the DoD, and if PEAs were subsequently licensed by the Commission, these same licensing rules adopted below would apply.

1. Eligibility

As the Commission proposed in the *FNPRM,* it adopts an open eligibility standard for licenses in the 3.45 GHz Service, consistent with established Commission practice. This open eligibility standard does not affect required qualifications, such as citizenship, character, alien ownership, or other generally applicable qualifications that may apply under the Commission's rules. The only commenter to address this issue, T-Mobile, supports the Commission's proposal. This standard will encourage the development of new technologies, products, and services, while helping to ensure efficient use of this spectrum. The Commission will apply the ineligibility provision of the part 27 rules, however, under which a person who, for reasons of national security, has been barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant is ineligible to hold a license that is required by the Spectrum Act to be assigned by a system of competitive bidding under section 309(j) of the Communications Act.

2. Mobile Spectrum Holding Policies

After careful consideration of the record, and in the Commission's expert judgment, the Commission finds that it is appropriate to adopt a bright-line, pre-auction limit of 40 megahertz in the 3.45 GHz band, in line with what a diverse group of commenters have proposed. The Commission agrees that adopting an in-band spectrum aggregation limit will effectively balance the statutory objectives informing the Commission's design and implementation of competitive bidding systems because this limit will, for example, help to promote spectrum access and encourage competition in the provision of 5G services, while still supporting the efficient and intensive use of spectrum. Specifically, the Communications Act requires the Commission to examine closely the impact of spectrum aggregation on competition, innovation, and the efficient use of spectrum to ensure that spectrum is assigned in a manner that serves the public interest, convenience,

and necessity. Section 309(j)(3) of the Act provides that, in designing systems of competitive bidding, the Commission must ''include safeguards to protect the public interest in the use of the spectrum,'' and must seek to promote various objectives, including ''promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants,'' and promoting the ''efficient and intensive use'' of spectrum. 47 U.S.C. 309(j)(3). Furthermore, for auctions like this one that are subject to the CSEA, the Commission must promote the objective of the recovery of 110 percent of estimated relocation or sharing costs as provided to the Commission by NTIA and Federal users; without meeting the reserve price, the Commission cannot conclude the auction. The Commission finds that this pre-auction spectrum limit it adopts will meet the Commission's objectives for this band more effectively than the proposed case-by-case review of post-auction long-form applications.

The Commission acknowledges that it has come to somewhat different conclusions about the application of pre-auction, in-band spectrum aggregation limits to different bands at different times. The Commission's balancing of the various section 309(j) factors in determining whether and what limits to apply in this band reflects, in part, the importance Congress assigned to rapid deployment of this particular band and the timetable set forth in the Beat CHINA for 5G Act. By replacing case-by-case review with a bright-line ex ante limit, the Commission will be able to expedite the licensing of, and deployment by, winning bidders. This approach also reflects the Commission's increased emphasis on the statutory factor of promoting dissemination of licenses among a wider variety of applicants, particularly in the rollout of the next generation of wireless broadband service that is expected to play a much greater role in the nation's economy. In this situation, a pre-auction limit of 40 megahertz effectively balances these statutory factors.

More specifically, while the Commission did not adopt pre-auction limits in the AWS–3 band, the 3.7 GHz band, or in the Spectrum Frontiers proceedings, for the various reasons discussed therein, it did establish such limits in other proceedings, based on the assessment that, under the operative circumstances there, such limits would serve the public interest. For example, it established a spectrum reserve of up to 30 megahertz in the 600 MHz Broadcast Incentive Auction to ensure against excessive concentration of below-1–GHz spectrum. In the CBRS 3.5 GHz band auction, the Commission set a 40 megahertz limit on the aggregation of PALs in order to ensure against excessive concentration within that band, particularly given the unique dynamic sharing scheme in that band, which included Federal and non-Federal sharing. The 3.45 GHz band also will involve a mechanism for sharing by Federal and non-Federal users in specific areas. The Commission finds that, on balance, the public interest is best served by adopting such a pre-auction spectrum aggregation limit in the 3.45 GHz band. The Commission concludes that a limit of 40 megahertz out of the total of 100 megahertz in the context of the 3.45 GHz band will facilitate competitive access, promote innovation, and lead to a greater diversity of bidders, while at the same time ensuring that the reserve price is met.

In addition, in order to prevent any post-auction undermining of in-band limits, and the balancing of statutory factors that they further, the Commission retains the 40 megahertz cap for four years following the auction. The Commission acknowledges that its public interest goals in adopting a bright-line limit for this band could be undermined if entities that win 40 megahertz of spectrum at auction could then acquire more 3.45–3.55 GHz spectrum post-auction in the secondary market. While the Commission has a general policy of promoting flexibility in secondary market transactions, the Commission finds that adopting a holding period of four years, which correlates to the first performance benchmark for 3.45 GHz Service licensees, appropriately balances its public interest goals in setting the pre-auction limit while still retaining flexibility in the secondary market over the medium term. Accordingly, the Commission concludes that no entity can hold more than 40 megahertz of 3.45–3.55 GHz spectrum for a period of four years after conclusion of the auction.

In the mobile wireless marketplace, the Commission has consistently defined the product market as a combined ''mobile telephony/broadband services'' market that is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks. In this item, the Commission adopts flexible-use rules to enable just that—terrestrial mobile use of this spectrum for the deployment of 5G and other upcoming advanced wireless services.

Spectrum is an essential input into that provision of wireless services, and for that reason, the Commission has applied a spectrum screen in evaluating proposed secondary market transactions involving spectrum in order to help identify those transactions that raise competitive concerns due to excessive concentration of spectrum. As such, given that the 3.45 GHz band will become suitable and available in the near term for the provision of mobile telephony/broadband services, the Commission finds that including this 100 megahertz of spectrum in the 3.45 GHz band in the input market for spectrum best supports the public interest. The Commission finds that the 3.45 GHz spectrum is suitable and available for the provision of mobile wireless services in the same manner as other spectrum bands that currently are included in the Commission's spectrum screen as applied to secondary market transactions. Accordingly, the Commission will add these 100 megahertz to the spectrum screen once the auction closes. Most commenters support this approach.

The Commission notes the main purpose of the spectrum screen is to act as an analytical tool in helping to identify those markets in which: (1) There could be an increased likelihood that rival service providers or potential new entrants would be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market; and (2) rivals' costs could be increased to the extent that they would be less likely to compete robustly. As such, what is critical is whether the spectrum is suitable and available in the near term, and not whether it is currently deployed. The Commission finds that the 100 megahertz of 3.45–3.55 MHz spectrum will be suitable and available upon conclusion of the auction, and therefore, should be included in the spectrum screen at that point. Taken together, the pre-auction spectrum aggregation limit and four-year prohibition on transfers of 3.45 GHz Service licenses will help promote diversity in bidders while allowing flexibility to engage in secondary market transactions in time, and the inclusion of the spectrum in the spectrum screen will further the Commission's interest in continuing to monitor for excessive concentration of spectrum holdings across all bands suitable and available for the provision of mobile wireless services.

3. Geographic Licensing

Use of Geographic Licensing.—Consistent with the Commission's approach in several other bands used to provide fixed and mobile services, the Commission finds that it is in the public interest to license the 3.45 GHz Service on an exclusive, geographic area basis. Geographic area licensing provides flexibility to licensees, promotes efficient spectrum use, and facilitates rapid assignment of licenses when using competitive bidding because mutually exclusive applications are received. There is wide support in the record for licensing the 3.45 GHz band flexible-use spectrum on an exclusive, geographic basis, and the Commission finds that such an approach will give certainty to licensees and provide the efficiencies of scale and scope that drive innovation, investment, and rapid deployment of next generation services.

Geographic License Area.—In the *FNPRM,* the Commission proposed to issue licenses on a PEA basis for the 3.45 GHz Service. Based on the record and consistent with the Commission's proposal, the Commission finds that PEAs are the appropriate license area for the technical rules it adopts in this band. In particular, the Commission agrees with commenters that, given its decision to adopt higher-powered operation in this band, PEAs will better assist carriers in making the most of the capabilities of 5G networks and encourage investment in furtherance of the goals found in section 303(y) of the Communications Act. These higher power levels allow larger coverage areas and encourage providers to take advantage of macro-cell deployments where possible, which are better suited to PEAs than a smaller license area. T-Mobile notes in particular that higher power levels combined with PEA license areas will promote service in rural areas.

Similarly, the availability of spectrum aggregation across other bands with similar technical rules make PEAs a better choice for the 3.45 GHz Service. The 3.7 GHz band, as well as several other recently licensed services, are licensed on a PEA basis, and the Commission finds that the goal of facilitating 5G service in the 3.45 GHz band is best served by aligning the band's rules with those of these bands.

For this reason, the Commission is not persuaded that it should license the 3.45 GHz band by counties or by census tracts. While the Commission recognizes that there are benefits of smaller license areas as a general matter, it declines to adopt license areas smaller than PEAs for the 3.45 GHz band, given its decision to allow higher-powered operations in this band.

Non-CONUS Geographies and the Gulf of Mexico.—As was noted in the *FNPRM,* the AMBIT efforts focused on licensing the 3.45 GHz band within the contiguous United States only, and for that reason the Commission proposed to exclude Alaska, Hawaii, and the U.S. Territories from 3.45 GHz band licensing at this time. NTIA recently affirmed that the Gulf of Mexico should not be considered for auction at this time. While the DoD may conduct further analysis at a later date, its transition plans filed with NTIA do not include areas outside of the contiguous United States or the Gulf of Mexico. As such, the Commission will not issue 3.45 GHz Service licenses in Alaska, Hawaii, the U.S. Territories, or the Gulf of Mexico at this time. While many commenters urge the Commission to license this and other mid-band spectrum in areas outside the contiguous United States, the Commission believes it would be premature and unwise for it to move beyond the AMBIT agreement in licensing the 3.45-GHz band in areas where the DoD has not committed to clearing or coordinating in the band to allow for its use.

The Commission recognizes, however, that over time more areas may become available for 3.45 GHz band use. In the *FNPRM,* the Commission noted that additional analysis by NTIA and the DoD, in cooperation with industry stakeholders may identify additional Cooperative Planning Areas and Periodic Use Areas outside the contiguous United States. To take advantage of any such future analysis that takes place, the Commission sought comment on whether it should delegate authority to the Wireless Telecommunications Bureau and the Office of Engineering and Technology to make any future adjustments to these areas as they deem appropriate and several commenters support the Commission doing so. In order to maximize future opportunities for 3.45 GHz band access, including in areas not otherwise licensed by the Commission's rules, such as PEAs in Alaska, Hawaii, the Gulf of Mexico, and other areas outside the contiguous United States, the Commission therefore delegates authority to the Wireless Telecommunications Bureau and the Office of Engineering and Technology, in coordination with NTIA, to create additional Cooperative Planning Areas and Periodic Use Areas as necessary to facilitate commercial network expansion into areas outside the contiguous United States. These new areas may be created upon notification from NTIA that non-Federal operations can occur, either alongside ongoing Federal operations or in areas cleared of those operations. The Commission further authorizes the Wireless Telecommunications Bureau and the Office of Economics and Analytics to consider applications and assign licenses for the PEAs associated with such additional Cooperative Planning Areas and Periodic Use Areas consistent with the licensing, technical, and competitive bidding rules the Commission is adopting, as such new areas are created for the 3.45 GHz band. Insofar as it becomes necessary to authorize non-Federal fixed and mobile (except aeronautical mobile) operations in these new license areas on the basis of rules that differ from the rules adopted here, the Commission delegates authority to the Wireless Telecommunications Bureau and Office of Engineering and Technology to conduct a rulemaking proceeding to make necessary changes to accommodate Federal operations and impose requirements on licenses for those new areas as needed.

4. License Term and Renewal

License Term.—In the *FNPRM,* the Commission proposed 15-year license terms for the 3.45 GHz Service, which would be consistent with those adopted for the 3.7 GHz Service. As with the 3.7 GHz Service, the Commission believes that additional time for licensees to engage in, and recoup costs for, long-term investments may be necessary here given the need to coordinate Federal spectrum usage in this band with affected licensees. The Commission adopts its proposal to grant 3.45 GHz Service licenses for 15-year terms. Commenters widely support a 15-year license term. The Commission finds that the application of its standard 15-year license term for flexible-use licenses to the 3.45 GHz Service supports its overall goal of providing uniform licensing rules for this band and other flexible-use bands that predominantly host next-generation wireless networks. The Commission also agree with U.S. Cellular Corporation that providing sufficient time for licensees to realize reasonable returns on their investments is particularly important for spurring investment in rural areas, where returns on investment take longer to achieve as a result of lower population densities in such areas.

Renewal.—As proposed in the *FNPRM,* the Commission will apply its general part 27 renewal requirements for wireless licenses to the 3.45 GHz Service, as the Commission has for the

3.7 GHz Service and the Citizens Broadband Radio Service. The Commission will include the 3.45 GHz Service in the unified renewal framework for Wireless Radio Services. This means that 3.45 GHz Service licensees must comply with § 1.949 of the Commission's rules and demonstrate that, over the course of their license term, they either (1) provided and continue to provide service to the public, or (2) operated and continue to operate the license to meet the licensee's private, internal communications needs. Satisfaction with this requirement may be demonstrated either through the renewal showing in paragraph (f) of that rule or the relevant safe harbor found in paragraph (e).

As with other licensing rules the Commission adopts in this item, the Commission finds that the application of this renewal standard to the 3.45 GHz Service will help create uniform licensing rules for across flexible-use bands likely to host next-generation wireless networks. The Commission believes the likely use of this band for 5G and other wireless broadband services is well-suited to this renewal framework. Commenters support applying part 27 renewal rules to the 3.45 GHz Service.

5. Performance Requirements

Traditional Performance Benchmarks.—In addition to adopting renewal standards, the Commission also establishes performance requirements to ensure that spectrum is used intensely and efficiently. Performance requirements play a critical role in ensuring that licensed spectrum does not lie fallow. The Commission has applied different performance and construction requirements to different bands on a case-by-case basis, based on the unique circumstances surrounding deployment in that spectrum.

In the *FNPRM,* the Commission proposed that 3.45 GHz Service licensees offering mobile or point-to-multipoint service provide reliable signal coverage and offer service to at least 45% of the population in each of their license areas within eight years of the license issue date (first performance benchmark), and at least 80% of the population in each of their license areas within 12 years of the license issues date (second performance benchmark). For licensees providing fixed service, it proposed that they must demonstrate within eight years of the license issue date that they have four links operating and are providing service where the population within each license area is equal to or less than 268,00 people; where population within the license area is greater than 268,000, it must show that at least one link is in operation and providing service, either to customers or for internal use, for every 67,000 persons within a license area (first performance benchmark). By 12 years after the license issue date, the Commission proposed that point-to-point licensees must have eight links operating and providing service, either to customers or for internal use, if the population within the license area is equal to or less than 268,000, or if the population is greater than this, that it is providing service and has at least two links in operation per every 67,000 persons within a license area (second performance benchmark).

For the 3.45 GHz Service, the Commission determines that accelerated performance requirements, as compared to what was proposed in the *FNPRM,* are appropriate. While the Commission maintains the proposed signal coverage and link benchmarks, it reduces the timelines under which 3.45 GHz Service licensees must meet the first and second benchmarks. Specifically, 3.45 GHz Service licensees must meet the first performance benchmark at four years after the license issue date and must meet the second performance by at eight years after the license issue date. The Commission finds the four- and eight-year timeline will better serve the public interest for several reasons.

First, the 3.45 GHz band is not necessarily ''greenfield'' spectrum, a fact that the Commission has considered when it has adopted longer performance requirement deadlines. Rather, much of the 3 GHz band—including the 3.45 GHz band—has already been allocated for 5G use globally, with standard setting and global harmonization well underway and the technology for 5G deployment in the 3.45–3.55 GHz band is already available in the marketplace. As discussed above, 3GPP has specified two spectrum operating bands for 5G that overlap with the 3.45 GHz band: Band n77 (3.3–4.2 GHz) and band n78 (3.3–3.8 GHz). The Commission believes that the potential for economies of scale in the deployment of equipment in this band and adjacent bands can facilitate the widespread deployment of devices and services in this band in the near-term. As a result, the Commission anticipates that licensees can meet its revised performance benchmark deadlines.

Second, the Commission believes that these reduced timelines will better encourage robust investment and deployment and ensure that this valuable mid-band spectrum does not lie fallow. As discussed, the Commission is working swiftly to be ready to auction this spectrum in 2021 and it has set aggressive timelines for the clearing of secondary, non-Federal incumbents; and the DoD is similarly working quickly to prepare this band for rapid deployment. In addition, the Commission believes that its more aggressive performance timelines will further the clear Congressional intent in the Beat CHINA for 5G Act of 2020 not only to make this spectrum available to industry, but also to position it for rapid deployment. Making the most of these efforts requires 3.45 GHz licensees to be similarly focused on building out these networks as quickly as possible. Third, such aggressive timelines for deployment have been applied to mid-band spectrum before, most recently in the 2.5 GHz band, where the Commission noted that the critical role of mid-band spectrum in today's spectrum environment warrants such an approach.

Internet-of-Things (IoT) Performance Benchmarks.—In the *FNPRM,* the Commission also proposed to adopt the IoT alternate performance requirements used for the 3.7 GHz Service to give licensees the flexibility to provide services potentially less suited to a population coverage metric. Specifically, the Commission proposed that 3.45 GHz Service licensees providing IoT-type services could demonstrate that they offer geographic area coverage of 35% of the license area at the first performance benchmark 65% of the license area at the second performance benchmark.

The Commission adopts the proposed alternative IoT performance metrics but reduce the timeline under which 3.45 GHz Service licensees must meet them, consistent with the timeline it adopts for traditional performance benchmarks. For the same reasons that the Commission reduces the timeline for meeting the first and second population coverage and link-based benchmarks, it likewise reduces the timeline for meeting the alternative IoT performance benchmarks to four and eight years after the license issues date, respectively.

Failure to Meet Performance Requirements.—Alongside the performance benchmarks the Commission adopts, it also adopts meaningful and enforceable penalties for failing to meet those benchmarks. In the *FNPRM,* the Commission proposed that, in the event a licensee fails to meet the first performance benchmark, its second benchmark and license term would be reduced by two years, thereby requiring it to meet the second performance benchmark two years sooner and its license term would be

reduced by two years. If a licensee fails to meet the second performance benchmark, the Commission proposed that its authorization for each license area in which it fails to meet the performance requirement would terminate automatically without Commission action.

Given the four- and eight-year timeline the Commission has adopted, the Commission modifies slightly this proposal. Accordingly, if the 3.45 GHz Service licensee fails to meet the first performance benchmark (at four years), its second benchmark period will be reduced by one year (*i.e.,* must be met at seven years after the issues date). Similarly, failure to meet the first performance benchmark will likewise reduce the license term by one year—*i.e.,* the license term would be reduced to 14 years. Consistent with the *FNPRM,* if a 3.45 GHz Service licensee fails to meet the second performance benchmark, its authorization for each license area in which it fails to meet the performance requirements will terminate automatically without Commission action.

The Commission also adopts its proposal that, in the event a 3.45 GHz Service licensee's authority to operate terminates, its spectrum rights should become available for reassignment pursuant to the competitive bidding provisions of section 309(j). 47 U.S.C. 309(j). Consistent with the Commission's rules for other part 27 licenses, any 3.45 GHz Service licensee that forfeits its license for failure to meet its performance requirements shall be precluded from regaining that license.

Compliance Procedures.—As it did in the 3.7 GHz Service, the Commission in the *FNPRM* proposed to require 3.45 GHz Service licensees to submit electronic coverage maps that accurately depict both the boundaries of each licensed area and the coverage boundaries of the actual areas to which the licensee provides service or, in the case of a fixed deployment, the locations of the fixed transmitters associated with each link. The Commission adopts this proposal. Each coverage filing must include supporting documentation certifying the type of service that the licensee is providing for each licensed area within its service territory and the type of technology used to provide such service. Supporting documentation must include the assumptions used to create the coverage maps, including the propagation model and the signal strength necessary to provide reliable service with the licensee's technology. Consistent with the Commission's proposed rule, to demonstrate compliance with these performance requirements, licensees must use the most recently available decennial U.S. Census Data at the time of measurement and must base their measurements of population or geographic area served on areas no larger than the Census Tract level.

6. Licensed-By-Rule Use

In the *FNPRM,* the Commission sought comment on potentially authorizing ''license-by-rule'' operations in the 3.45 GHz band. It noted that such opportunistic use of spectrum is permitted in the General Authorized Access tier of the adjacent Citizens Broadband Radio Service. The Commission asked whether this should be permitted generally or where not all spectrum licenses are sold at auction. The Commission asked commenters to explain the effect of allowing such operations on the Commission's efforts to ensure adequate protection of incumbent and licensee operations from harmful interference, and whether a database or other coordination techniques would create unnecessary burdens on licensees or hinder incumbent protection.

Some commenters support this proposal and note that opportunistic access can help to ensure this spectrum is put to immediate and intensive use. Indeed, in the Commission's *Report & Order* establishing the Citizens Broadband Radio Service, the Commission stated that ''permitting opportunistic access to unused Priority Access channels would maximize the flexibility and utility of the 3.5 GHz Band for the widest range of potential users'' and ''ensure that the band will be in consistent and productive use.'' *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550–3650 MHz Band,* GN Docket No. 12–354, Report and Order, 80 FR 36164, June 23, 2015, and Second Further Notice of Proposed Rulemaking, 80 FR 34119, June 15, 2015, 30 FCC Rcd 3959, 3983, para. 72 (2015). Thus, the Commission has not only authorized opportunistic use of locally unused spectrum in the adjacent CBRS band but also by unlicensed TV White Space operations in the 600 MHz band. These comments make clear, however, that implementing opportunistic use would require the use of some type of automated frequency coordination mechanism, such as the Spectrum Access System that is used in the Citizens Broadband Radio Service, and many commenters oppose such a mechanism because of the reporting burden it places on licensees. Although Spectrum Access Systems have coordinated opportunistic use of locally unused spectrum in other bands, the Commission declines to adopt this approach in the 3.45 GHz band at this time.

In the Citizens Broadband Radio Service band, Federal incumbent use is constantly changing, requiring a dynamic spectrum sharing environment and using automated coordination mechanisms to enable that environment. This approach allows the provision of a General Authorized Access tier without imposing additional requirements on Priority Access Licensees. Here, because the DoD and the Commission have worked collaboratively on a different sharing regime in the band, the limited Federal operations that remain indefinitely in the band will not require dynamic spectrum sharing. The goal shared by the Commission and the Executive Branch, including the DoD, has been to minimize requirements on licensees to coordinate their operations with third-party systems, thereby allowing maximum opportunities for flexibility in deployment and operational design. Permitting licensed-by-rule operations would require implementing coordination mechanisms similar to the Spectrum Access Systems found in the Citizens Broadband Radio Service. In light of the work that the DoD has done to plan for clearing the band, and the Commission's statutory mandate to begin a system of competitive bidding to auction some or all of the 3.45 GHz band by December 31, 2021, the Commission declines to permit licensed-by-rule operations at this time.

Similarly, based on the framework developed for this band, permitting licensed-by-rule operations near Cooperative Planning Areas and Periodic Use Areas would limit the ability of the DoD to work directly with licensees to ensure continued access as needed while minimizing the burden on commercial wireless operations. The DoD's work on determining the boundaries of these areas relies on its ability to cooperate with licensees to design and plan its use of the 3.45 GHz band. Although different coordination or exclusion areas might be designed in the future to accommodate opportunistic use enforced by a Spectrum Access System or similar mechanism, the Commission declines at this time to adopt any proposal that would involve licensed-by-rule use in this band. Nevertheless, the Commission recognizes that there may be potential opportunities in the future to consider steps it might take, in cooperation with NTIA and other Federal partners, to effect an overall

rationalization of the non-Federal services in the 3 GHz band.

F. Competitive Bidding Rules

The Communications Act requires that the Commission resolve any mutually exclusive applications for new flexible-use licenses in this band through a system of competitive bidding. Consistent with the competitive bidding procedures used by the Commission in previous auctions, the Commission adopts the proposal in the *FNPRM* to conduct any auction for licenses in this band in conformity with the general competitive bidding rules set forth in part 1, subpart Q, of the Commission's rules. These part 1 rules govern competitive bidding design, application and certification procedures, reporting requirements, and the prohibition on certain communications regarding the auction. In addition, the part 1 rules address designated entity preferences and unjust enrichment, and provide a framework for the auction process. The commenters that address this issue generally support the proposal. Consistent with the part 1 rules, the Commission separately considers a Public Notice seeking comment on procedures for an auction of new licenses in this band, thereby beginning the separate pre-auction process. *See Auction of Flexible-Use Service Licenses in the 3.45–3.55 GHz Band for Next-Generation Wireless Services; Comment Sought on Competitive Bidding Procedures for Auction 110,* AU Docket No. 21–62, Public Notice, FCC 21–33 (2021) (Mar. 17, 2021), which is published elsewhere in this issue of the **Federal Register**.

Given the record and the Commission's experience in successfully conducting auctions pursuant to the part 1 rules, the Commission adopts the proposal to employ those rules when developing the auction for new licenses in this band. Should the Commission subsequently modify its general competitive bidding rules, the modifications would apply here as well. If and when areas outside the contiguous United States are made available by the DoD, the part 1 rules would similarly apply to any PEAs licensed by competitive bidding in those areas.

As the Commission observed in the *FNPRM,* under the Commercial Spectrum Enhancement Act (CSEA), Federal entities operating on certain frequencies that have been reallocated from Federal to co-primary Federal and non-Federal use and assigned by the Commission through auction are eligible for reimbursement for the cost of relocating or sharing their operations. In order to provide for such reimbursement, the Communications Act requires that the ''total cash proceeds'' from the auction of these frequencies must equal at least 110% of the estimated relocation or sharing costs of incumbent Federal operations. Based on the current allocation of the 3.45 GHz band for uses by the DoD and the DoD's planned sharing arrangements and relocation of some operations out of the band to make way for commercial use as part of the AMBIT agreement, this spectrum qualifies as eligible frequencies under the CSEA. Accordingly, the reserve price for any auction of 3.45 GHz band licenses at a minimum will be 110% of expected Federal relocation costs, based on the estimate of relocation costs provided to the Commission by NTIA consistent with the CSEA. In the public notice seeking comment on procedures for an auction of new licenses in this band being separately considered, the Commission seeks comment on setting that aggregate reserve price at $14,775,354,300.

Designated Entity Provisions.—In the *FNPRM,* the Commission sought comment on whether to offer bidding credits to designated entities in any auction of new licenses in this band. When authorizing the Commission to use competitive bidding, Congress required that the Commission ''ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' Based on the Commission's prior experience with the use of bidding credits in spectrum auctions, the Commission finds that using bidding credits is an effective tool to achieve the statutory objective of promoting participation of designated entities in the provision of spectrum-based services.

Small Businesses.—One way the Commission fulfills this mandate is through the award of bidding credits to small businesses. In the *Competitive Bidding Second Memorandum Opinion and Order, Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* PP Docket No. 93–253, Second Memorandum Opinion and Order, 59 FR 44272, August 26, 1994, 9 FCC Rcd 7245, 7269, para. 145 (1994); *see also* 47 CFR 1.2110(c)(1), the Commission stated that it would define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold. Further, in the *Part 1 Third Report and Order, Updating Part 1 Competitive Bidding Rules,* WT Docket No. 14–170, Report and Order, 80 FR 56764, September 18, 2015, 30 FCC Rcd 7493, 7521, para. 145 (2015), and the more recent *Competitive Bidding Update Report and Order, Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures,* WT Docket No. 97–82, Third Report and Order, 63 FR 2315, January 15, 1998, 13 FCC Rcd 374, 388, para. 18 (1997), the Commission, while standardizing many auction rules, determined that it would continue to use a service-by-service approach to defining small businesses. In the *FNPRM,* the Commission proposed to adopt bidding credits for the larger two of the three designated entity business sizes provided in the part 1 rules.

In adopting competitive bidding rules for other spectrum bands that will be used for 5G services, the Commission included provisions for designated entities to promote opportunities for small businesses, rural telephone companies, and businesses owned by members of minority groups and women to participate in the provision of spectrum-based services. For example, the Commission adopted two small business definitions for the auction of licenses in the 3.7 GHz band. These two small business definitions are the higher two of the three small business average gross revenues thresholds in the Commission's standardized schedule of bidding credits.

The Commission adopts the proposal in the *FNPRM* to apply the two small business definitions with higher average gross revenues thresholds to auctions of overlay licenses in the 3.45 GHz band. Accordingly, an entity with average annual gross revenues for the preceding five years not exceeding $55 million will qualify as a ''small business,'' while an entity with average annual gross revenues for the preceding five years not exceeding $20 million will qualify as a ''very small business.'' Since their adoption in 2015, the Commission has used these gross revenue thresholds in auctions for licenses likely to be used to provide 5G services in a variety of bands. The results in these auctions indicate that these gross revenue thresholds have provided an opportunity for bidders claiming eligibility as small businesses to win licenses to provide spectrum-based services at auction. Furthermore, by adopting thresholds that are not overly inclusive of qualified bidders, the Commission preserves the effectiveness of designated entity benefits for the parties that the Commission's

designated entity rules are intended to benefit.

The Commission also adopts the proposal in the *FNPRM* to provide qualifying ''small businesses'' with a bidding credit of 15% and qualifying ''very small businesses'' with a bidding credit of 25%, consistent with the standardized schedule in part 1 of the Commission's rules. This proposal, supported by the Wireless internet Service Providers Association (WISPA), was modeled on the small business size standards and associated bidding credits that the Commission adopted for a range of other services. The Commission believes that this two-tiered approach has been successful in the past, and it will employ it once again. The Commission believes that use of the small business tiers and associated bidding credits set forth in the part 1 bidding credit schedule will provide consistency and predictability for small businesses.

Rural Service Providers.—In the *FNPRM,* the Commission also sought comment on a proposal to offer a bidding credit for rural service providers. The rural service provider bidding credit awards a 15% bidding credit to those that service predominantly rural areas and that have fewer than 250,000 combined wireless, wireline, broadband and cable subscribers. As a general matter, the Commission ''has made closing the digital divide between Americans with, and without, access to modern broadband networks its top priority . . . [and is] committed to ensuring that all Americans, including those in rural areas, Tribal lands, and disaster-affected areas, have the benefits of a high-speed broadband connection.'' WISPA supports this proposal as consistent with the Commission's approach in other flexible-use bands.

The Commission finds that a targeted bidding credit will better enable entities already providing rural service to compete for spectrum licenses at auction, and in doing so, will increase the availability of 5G service in rural areas. Accordingly, the Commission will apply the rural service provider bidding credit in auctions of new licenses in this band.

G. Relocation of Secondary Non-Federal Radiolocation Operations

1. Timing of Relocation

In the *Report and Order*, the Commission determined that secondary radiolocation licensees would be relocated to the 2.9–3.0 GHz band. In the *FNPRM*, it proposed that authorization for these secondary, non-Federal radiolocation operations in the to-be-cleared spectrum would cease on a date consistent with the first possible grant of flexible-use authorizations to new users in the band. As an example, the Commission noted that a licensing scheme that would result in an auction would see non-Federal radiolocation use sunset within 90 days of the close of the auction, because that date is ''consistent with the first possible grant of flexible-use authorizations.''

NBCUniversal and Nexstar Broadcasting argue that 90 days after the auction closes is insufficient for them to take the steps needed relocate their Doppler radar systems. For example, NBCUniversal projects that it will take 18 months total for its transition given the production and procurement of equipment needed to transition NBCUniversal's four Doppler weather radar sites to the 2.9–3.0 GHz band, labor to manufacture and install new equipment, and equipment certification testing for its new operations. Nexstar projects that its transition will take 12–15 months for its one radar system. NBCUniversal and Nexstar argue that they should be permitted to continue operations until such time that flexible-use licenses are prepared to deploy services in the relevant markets, or in the alternative, asks the Commission to establish a sunset date of at least 180 days (*i.e.,* 6 months) after new flexible-use licenses in the relevant markets are granted.

The Commission finds persuasive the arguments raised by Nexstar and NBCUniversal regarding the amount of time needed to successfully complete their transitions. The Commission finds the public interest will be best served by adopting a sunset date of the secondary radiolocation authorization 180 days after the new flexible-use licenses are granted. The Commission also delegates authority to the Office of Engineering and Technology to cease certifying radiolocation equipment for the 3.45 GHz band 180 days after the new flexible-use licenses are granted. Secondary radiolocations users and the new flexible-uses licenses in a given market may of course enter into private agreements to complete the relocation process sooner.

The Commission sought comment in the *FNPRM* on interim timing and benchmarks for the transitioning of secondary, non-Federal radiolocation operations out of the 3.3–3.55 GHz band. No commenter suggests any such specific interim benchmarks or deadlines and the Commission finds no need to adopt any given the limited number of licensees that need to be transitioned. Secondary, non-Federal radiolocation licensees must relocate their operations by the sunset date.

2. Relocation Reimbursement

In the *FNPRM*, the Commission sought comment on whether to require new flexible-use licensees to reimburse secondary, non-Federal radiolocation operators for their relocation costs pursuant to the Emerging Technologies framework, despite the secondary status of these operations. The Commission finds that, in this unique instance, the public interest is served by requiring new flexible-use licensees to reimburse secondary, non-Federal radiolocation users for their reasonable relocation expenses, particularly given the limited number of secondary radiolocation users, the public safety benefit their operations provide to millions of Americans, and the relatively small relocation costs at issue. The Commission's Emerging Technologies framework represents a broad set of tools that the Commission uses to facilitate the process of making spectrum available for new uses. Generally, the Commission applies the framework when it is necessary to relocate incumbent licensees in order to introduce new services into a frequency band. The application of specific relocation and cost-sharing processes under the framework varies for each frequency band and is based on the types of incumbent licensees and the particular characteristics of the band. In the *FNPRM*, the Commission noted that secondary users are normally not subject to reimbursement because secondary users cannot claim protection from primary operations, including those subsequently licensed by the Commission.

In order to ensure the speedy clearing of the 3.3–3.55 GHz band and minimize disruptions to the weather radar systems operated by secondary radiolocation users, the Commission will require new flexible-use licensees in the 3.45 GHz Service to reimburse secondary, non-Federal radiolocation licensees for reasonable costs related to the relocation of those operations to the 2.9–3.0 GHz band, including the costs of a relocation clearinghouse's administration of the reimbursement. Several factors lead the Commission to conclude that requiring reimbursement of these secondary, non-Federal radiolocation users supports the public interest in this specific instance. First, the operations of secondary radiolocation licensees provide an important public safety service by informing broadcasters' reports on severe, often life-threatening weather events. As both NBCUniversal and Nexstar note, their current transmitters

and related equipment must be replaced in order for their systems to work in the 2.9–3.0 GHz band; they cannot simply be retuned. Given the public interest value served by these Doppler radar networks, and when combined with the limited number of networks at issue, the Commission finds that the public interest is served by minimizing any transition-related disruption to these operations.

Second, there are very few radiolocation licensees that need to be relocated. In fact, there are only a total of seven licenses that need to relocate out of the band. Compared to other Commission relocation efforts, the number of licensees that need to be moved out of the band here is significantly fewer, and indeed is miniscule compared to the number of flexible-use licenses that will be made available at auction.

Third, the overall estimated costs of reimbursement for the weather radar systems to relocate to the 2.9–3.0 GHz band is minimal and the Commission does not believe that it will jeopardize the overall success of the auction of flexible-use licenses. NBCUniversal estimates that it will cost $2.16 million to relocate all four of its radar systems, inclusive of equipment and labor. Nexstar estimates about $1 million for its systems' relocation. This is a total of just over $3 million dollars in relocation costs for a band that is expected to generate much more in revenue at auction.

Fourth, the Commission notes that these secondary radiolocation users face relatively minimal limitations from existing Federal primary users, which are geographically concentrated in particular locations. As such, the weather radar systems current operate without risk of harmful interference despite their secondary status.

For all these reasons, the Commission finds that reimbursement of secondary radiolocation users is appropriate in this specific instance. The Commission stresses, however, that secondary users generally are not entitled to reimbursement for the expense of transitioning to another band. As a general matter, because such users are not entitled to cause harmful interference to, or seek protection from, primary users, such users have no reasonable expectation that their investments in a band will be reimbursed in a spectrum transition under the Commission's Emerging Technologies framework. Indeed, absent the presence of all of the unique factors described, the Commission would not mandate reimbursement here. Consistent with the Commission's longstanding policy, secondary users should not expect that they will be reimbursed as part of a spectrum band clearing.

3. Cost Allocation Structure

The Commission will require that the reasonable relocation reimbursement costs be shared by all 3.45 GHz Service licensees, regardless of location, rather than only those whose licenses would otherwise have been encumbered by the relocating incumbent operations. The Commission finds this to be the fairest and most efficient approach given the high-powered nature of many of these radiolocation stations, and the engineering and administrative difficulties inherent in attempting to determine which licensees would be directly affected by their operations. Given the estimated cost of relocation for all secondary, non-Federal radiolocation licenses, the burden on each licensee will be small relative to the cost of the license itself. Further, even if not directly affected, all 3.45 GHz Service licensees will benefit from a band fully cleared of secondary, non-Federal incumbents. While this basic structure has now become common in the Commission's application of the Emerging Technologies framework, the Commission's application in this instance seeks to streamline reimbursement and minimize the burdens on both incumbents and incoming licensees.

All new entrants to the band will be responsible for reimbursement of a pro rata share of reasonable relocation costs of non-Federal radiolocation operations. In other words, the total relocation costs will be divided by the number of 3.45 GHz Service licenses and each licensee will be required to pay their share based on the number of licenses they hold. If all licenses offered at auction are ultimately issued, this will mean each license held will require payment of approximately 0.025% of the total reimbursement costs.

The Commission finds that this structure provides an efficient and equitable option given the limited number of licensees requiring reimbursement and the complexity in determining which licenses are affected by the high-powered radiolocation systems being relocated. It will ensure that non-Federal radiolocation licensees are able to continue their operations without service interruptions while fairly distributing the costs of clearing the band across all new licensees. It also will avoid complex calculations as to which licensees are affected by the non-Federal radiolocation operations being relocated. These operations are typically high-powered, which allows them to detect and monitor weather patterns over hundreds of miles, but also have the potential to cause harmful interference to wireless broadband operations across several PEAs and not only the one in which they are located. It will therefore speed the process of clearing the band, making it available for deployment as soon after the grant of flexible-use licenses as possible.

As the Commission has done in past proceedings, it delegates to the Wireless Telecommunications Bureau, working in coordination with the Office of the Managing Director, authority to develop and implement a clearinghouse selection process similar to the process used in the 3.7 GHz proceeding; this delegation includes the authority to seek notice and comment on the parameters of additional considerations that should inform the creation and administration of the cost-sharing plan to help implement the Commission's decision here and, if necessary for the purposes of the more limited relocation here, to adjust the procedures adopted in that proceeding to tailor them to the relocation in this proceeding. Any disputes as to the reimbursement of particular expenses will be resolved by the Wireless Telecommunications Bureau.

3.45 GHz Service licensees will be required to pay their share of the reimbursement obligations subject to procedures to be specified by public notice. Non-Federal secondary radiolocation licensees must submit their expenses for relocating operations authorized under their licenses and existing as of the date of the Commission's temporary freeze on non-Federal applications in the 3.3–3.55 GHz band subject to procedures to be specified by public notice.

Due to the timing of the relocation of secondary, non-Federal radiolocation incumbents, the Commission agrees with NBCUniversal that the reimbursement requirement should include reasonable expenses incurred before the adoption of the *Second Report and Order*, provided that such expenses are legitimate, documented, required by the transition, and occurred subsequent to the adoption of the first *Report and Order* in this proceeding. These expenses include radar components being replaced to accommodate the stations' new frequencies, installation costs, professional services such as engineering to ensure coordination with incumbent operations in the 2.9–3.0 GHz band, and licensing costs related to the new equipment and frequencies. Expenses for other purposes, however,

such as optional equipment upgrades, will not be permitted. The clearinghouse will have the authority to determine if expenses are eligible for reimbursement, with any disputes to be resolved by the Wireless Telecommunications Bureau.

4. Section 316 License Modification

In the *FNPRM*, the Commission proposed to use its section 316 authority to modify existing secondary, non-Federal radiolocation licenses such that they are no longer authorized to operate in the 3.3–3.55 GHz band and instead will be authorized for operation in the 2.9–3.0 GHz band. The Commission adopts this proposal and issues an Order of Proposed Modification under section 316 to modify these licenses to operate on their new frequencies. This license modification will allow the Commission to clear the 3.3–3.55 GHz band for flexible-use operations while ensuring that these secondary, non-Federal radiolocation operations can continue to offer the same services as they do currently. The Commission finds that the modification is in the public interest, as it will spur investment in—and deployment of—next-generation wireless services, while ensuring that incumbent space station services will be able to maintain the same services as they are currently providing. The Commission delegates authority to the Wireless Telecommunications Bureau to modify the relevant licenses as needed to specify the new frequencies for each.

H. Continued Operation of Amateur Stations in Part of the 3.3–3.45 GHz Band

Bifurcation of the Amateur Band.—In the *Report and Order*, the Commission terminated the allocation for secondary amateur operations in the 3.3–3.5 GHz band in order to clear the way for flexible-use operations. In the *FNPRM*, it proposed to bifurcate the sunset of this allocation in order to allow amateur operations to continue for the time being in that portion of the band not yet ready for commercial operations, while more rapidly clearing the portion necessary to accommodate the new 3.45 GHz Service. This proposal would allow amateur operations to continue in the lower portion of the band while the Commission, NTIA, and the DoD continue to analyze whether that spectrum can be reallocated for flexible use. Specifically, the Commission proposed splitting the band at 3400 MHz, which would allow amateur use in 100 megahertz while also providing a buffer to protect flexible-use operations at the lower edge of the 3.45 GHz band, and it sought comment on this proposal.

The Commission adopts its proposal to bifurcate the band, however, it adjusts its proposal and sets 3450 MHz as the frequency at which the band will be split. Based on the record, the Commission finds that this best supports the public interest and continued amateur use below the 3.45 GHz band. While the *FNPRM* proposed a guard band of 50 megahertz, the record demonstrates that such a guard band is unnecessary given the nature of amateur operations in the band. No commenter provides technical justification for a guard band, and the Commission agrees with the Amateur Radio Relay League's (ARRL) assessment that the guard band is not necessary from a technical standpoint. The Commission also recognizes that the nature of amateur equipment realities makes the 50 megahertz at 3400–3450 MHz particularly valuable to amateur operators because it means existing equipment can continue to operate in the band for the time being. The Commission therefore allows secondary amateur operations to continue in the 3400–3450 MHz portion of the band. The Commission emphasizes, however, that amateur licensees remain secondary users, and those that operate on frequencies close to the 3450 MHz band edge must do so with particular caution to avoid causing harmful interference to flexible-use licensees in the 3.45 GHz Service, which hold primary status. In light of these considerations, while amateur operations between 3450 MHz and 3500 MHz must cease within 90 days of the public notice announcing the close of the auction for the 3.45 GHz Service, as specified in the *Report and Order*, amateur operations may continue between 3300 MHz and 3450 MHz while the Commission, NTIA, and the DoD continue to analyze whether that spectrum can be reallocated for commercial wireless use.

The Commission agrees with T-Mobile that amateur operators that choose to remain in this band must do so fully aware of the Commission's ongoing efforts to clear the entire 3.1–3.45 GHz band for commercial operations as soon as possible. As the Commission stressed in the *FNPRM*, any amateur operations that continue to operate in the 3.3–3.45 GHz band do so on a secondary basis, with the allocation subject to sunset at any time. There is no expectation that such operations will be accommodated in future planning for commercial wireless operations in this spectrum, or that amateur operators will receive more than a short period of notice before their operations must cease.

Consistent with the Commission's *FNPRM*, the Commission declines to provide reimbursement of ''relocation costs'' of amateur operations in this band. ARRL suggests that some equipment might be ''stranded'' if the Commission prohibited continued operations in the 3400–3450 MHz portion of the band and argued reimbursement might be justified if equipment were stranded. Because the Commission permits amateur operations to continue on a secondary basis in the 3400–3450 MHz portion of the band, this specific reimbursement issue is moot. More generally, the Commission declines to require 3.45 GHz Service licensees to reimburse amateur users for any potential costs related to their transitions to other amateur bands given the vastly different situation of amateur operators as compared to secondary, non-Federal radiolocation operators in the band. As the Commission noted above, requiring reimbursement of secondary users' relocation expenses is itself a departure from Commission precedent; the Commission took this step for secondary, non-Federal radiolocation users given the very small number of licensees, the nature of the equipment they use for their high-power weather radar systems, the public safety benefits they provide and the risk to life and property from potential interruption to that service, and the relatively minimal costs of relocating these five incumbent systems as compared to the value of this spectrum for flexible-use services. Similar exigent circumstances do not exist here with respect to the hundreds of amateur users in the band, especially given that they have other options available to them within and outside the 3 GHz band.

Section 316 Modification.—Finally, the *FNPRM* sought comment on whether the Commission must modify amateur licenses pursuant to the Commission's section 316 authority in order to accomplish its proposed changes to the amateur allocation. No commenters addressed this question. In the *FNPRM*, the Commission noted that, due to the unique nature of amateur licensing, there are no new frequencies being specified for amateur operations; amateurs will instead be permitted to use any frequency already allocated to amateur use. Amateur service operators are granted licenses of a particular class, not a license to operate on particular frequencies. Further, because of this bifurcation of the band, amateur operators should require only minimal software changes to their operations, if any changes are required at all. For

these reasons, the Commission concludes that the changes to its part 2 and part 97 rules already adopted in this proceeding, along with the part 2 rule changes being adopted, are sufficient to effectuate this change, and no section 316 license modification is necessary.

IV. Order On Reconsideration

In the *Report and Order*, the Commission sunset the secondary amateur allocation in the 3300–3500 MHz band in order to make way for the use of this spectrum for commercial wireless services. It noted that clearing all secondary, non-Federal operations, including those of amateur operators, will allow the maximum use of the band by flexible-use licensees, and that clearing the entire band, rather than simply the portion being reallocated immediately, will prevent adjacent-channel interference and facilitate future clearing of the entire band for flexible use. However, in order to ensure that spectrum continues to be used efficiently, in the *FNPRM* the Commission proposed, and indeed adopted as part of the *Second Report and Order* here, a bifurcated sunset date for that allocation to allow amateur use to continue below 3450 MHz.

ARRL, The National Association for Amateur Radio, seeks reconsideration of the decision in the *Report and Order* to sunset the amateur allocation in order to clear the 3.3–3.5 GHz band. In its petition, ARRL argues that the nature of amateur use is such that it will not cause harmful interference to commercial wireless operations in the 3.45 GHz Service and that the public interest is not served by removing amateur operations from spectrum not being actively considered for commercial wireless use. These arguments reiterate points made by ARRL in its original comments in this proceeding. The Commission denies ARRL's request.

Reconsideration may be appropriate when the petitioner demonstrates that the original order contains a material error or omission, or raises additional facts that were not known or did not exist until after the petitioner's last opportunity to present such matters. Petitions for reconsideration that do not warrant consideration by the Commission include those that: Fail to identify any material error, omission, or reason warranting reconsideration; rely on facts or arguments which have not been previously presented to the Commission; rely on arguments that have been fully considered and rejected by the Commission within the same proceeding; or relate to matters outside the scope of the order for which reconsideration is sought.

The Commission dismisses ARRL's petition as procedurally deficient. The petition fails to identify a material error or omission, raise facts not known before the last opportunity to present such matters, or demonstrate that reconsideration would be in the public interest. Instead, ARRL's petition simply repeats arguments previously raised, considered, and rejected during the initial comment period in this proceeding. As its rules make clear, the Commission need not consider petitions for reconsideration that merely repeat arguments the Commission previously rejected. Indeed, ARRL's claim that the Commission's conclusion that amateur operations are incompatible with mobile and fixed services intended to be provided by the new non-Federal primary licensees is conclusory shows that ARRL recognizes that the Commission did address its concerns and reach a conclusion regarding them. Simply repeating its assertion that secondary amateur operations can coexist with flexible-use operations, both during deployment and beyond, is not a ground for reconsideration of the Commission's decision in the *Report and Order*.

As an alternate and independent basis for the Commission's decision, ARRL's petition also fails on the merits. First, ARRL argues that the Commission's decision in the *Report and Order* leaves large amounts of spectrum vacant. This is not the case. Under the rules adopted here, amateur use will be permitted to continue in the 150 megahertz between 3.3 GHz and 3.45 GHz until the Commission acts to adopt rules permitting commercial wireless use of that part of the band, and flexible-use operations will commence in the spectrum between 3.45–3.55 GHz. All spectrum in which amateur operations are ceasing operation will remain in use, or be available for use at the discretion of Federal or non-Federal primary users. The entire band will also continue to be used for Federal operations. As a result of this decision, no spectrum will be left vacant, and that which is not actively in use at any particular time has been removed from amateur access in order to provide for full flexibility in use by 3.45 GHz Service licensees.

Second, ARRL argues that the Commission's grounds for rejecting its claims were conclusory and depart from its earlier spectrum policy, such as the Emerging Technology framework, because the Commission in the Emerging Technologies Order encouraged spectrum sharing and did not sweep away incumbent users on a date certain as is done in this proceeding. The Commission disagrees. While it is true that some band reallocations done under the Emerging Technologies framework permitted incumbent operations to continue while new entrants deployed, the Emerging Technologies framework represents a broad set of tools that the Commission uses to facilitate the process of making spectrum available for new uses. The application of specific relocation and cost-sharing processes under the framework generally varies for each frequency band and is based on the types of incumbent licensees and the particular characteristics of the band. While the Commission agrees with ARRL that certain provisions of the Emerging Technologies Order were highly successful in accomplishing the transition to PCS in the 2 GHz bands, the Commission is required by the Administrative Procedure Act to provide the essential facts upon which its decisions are based and explanations with actual facts and evidence beyond merely repeating conclusory statements, as ARRL explains in its Reply.

Contrary to ARRL's claims that the Commission's reasoning was conclusory, ARRL's proposal to apply certain provisions of the 1993 Emerging Technologies Order (58 FR 59174, November 8, 1993)—without accounting for the differences between the transition to PCS in the 2 GHz band and the 3.45 GHz reallocation—is conclusory and unreasoned. In adopting a new framework for the 3.45 GHz band, the Commission did just that: The Commission considered the technical characteristics of the band, the feasibility of sharing spectrum between incumbent and incoming operations, and the alternate spectrum available to those incumbents. In this case, the rapid deployment of flexible-use operations in this band, and the provision of full flexibility for new wireless broadband deployment, are critical to making the most of the extensive work being done across the Federal Government to open this band for flexible use. The Commission's decision to sunset the secondary amateur allocation in the 3.3–3.5 GHz band in order to make way for the use of this spectrum for flexible-use wireless services and to adopt a bifurcated sunset date to allow amateur use to continue below 3450 MHz is supported by the unique circumstances and particular characteristics of the band.

Further, as noted in the *Report and Order*, amateur operators have alternate spectrum, including in the 3 GHz band, in which to conduct their operations without creating interference concerns

and notification requirements for flexible-use wireless licensees. CTIA agrees with the Commission's reasoning that requires amateur operators to relocate by a sunset date, stating that this approach is entirely reasonable because amateur operators can move to myriad other bands that have an amateur allocation. As the Commission explained in the *Report and Order*, the record strongly favored a full clearing of the band before the grant of new flexible-use licenses in order to avoid reducing the deployment flexibility of new flexible-use licensees. This is due to the different nature of flexible-use operations relative to Federal radiolocation operations, and the different spectrum available for secondary use with the change in primary user of this band. With respect to this band, the Commission in the *Report and Order* found, and the Commission affirms here, that allowing amateur operations to continue until each individual frequency is put in use by a new 3.45 GHz Service licensee in that specific location would place an unnecessary burden on new licensees to ascertain the location and nature of amateur operations and provide proper notice to them. The Commission agreed with the concerns about burdens on licensees created by ARRL's proposal and believed that relying on amateurs to design their systems so as not to interfere with commercial operations would unreasonably restrain the flexibility commercial wireless licensees expect when spectrum rights are awarded at auction and is not in the public interest. Allowing maximal flexibility in network design, deployment, and operation will increase investment in communications services and systems and technological development by providing maximum opportunities for deployment of flexible-use services. The Commission finds that ARRL has offered nothing in its petition to rebut the Commission's conclusions.

In an *ex parte* filed following the public release of the draft of this item, ARRL argues again that there is no justification offered for the Commission's position. But even in that filing, ARRL acknowledges that its proposal for continued secondary access would impose burdens on 3.45 GHz Service licensees. In particular, before deploying pursuant to its license, a new 3.45 GHz licensee would be required to perform a spectrum survey combined with notice to amateurs in an area of proposed service, or to work with ARRL and issue a public notification of its build-out plans. This structure is, by definition, a restriction on licensee flexibility in deployment and a burden imposed on primary licensees in order to enable secondary access. The Commission does not believe that continued access to this spectrum for amateur operations justifies these limitations on the use of the band by 3.45 GHz Service licensees, especially given continued amateur access to 100 megahertz of this band.

ARRL argues that alternative spectrum may not be suitable for several specific amateur uses, including propagation studies and related weak signal and moon bounce operations, since by their nature they are dependent upon and studying the particular properties of the 3.3–3.5 GHz spectrum. As the Commission made clear in the *Report and Order*, amateur stations operating in the 3 GHz band have several other nearby bands available to them with similar propagation characteristics. ARRL notes in its reply that some amateur uses cannot be replicated in the numerous other spectrum bands available for amateur operations; to the extent that this is true, it is nonetheless outweighed by benefits of full clearing of this spectrum—ensuring that the spectrum is used intensely and efficiently, creating a spectral environment that will support wireless broadband operations, and promoting commercial interest and investment in the band.

The Commission made clear in the *Report and Order* that the full clearing of spectrum is necessary to ensure the intensive and efficient use of spectrum, create a spectral environment that will support wireless broadband operations, and promote commercial interest and investment in the band. ARRL has provided no new argument as to why this decision is incorrect or not in the public interest, and the Commission therefore denies its petition for reconsideration.

In a recent ex parte, ARRL asks that amateur use be permitted to continue in Alaska, Hawaii, and U.S. Territories. The Commission denies this additional request. The marginal benefits of allowing a temporary continuation of secondary amateur operations outside the contiguous United States is outweighed by the public interest benefits of removing this potential hurdle to future flexible use licensing in Alaska, Hawaii, and U.S. Territories. Clearing secondary amateur operations from these areas today will simplify and hasten the process of introducing flexible-use licensing in these areas in the future, in line with the Commission's other decisions in this proceeding and with the Congressional direction to make the licenses available for flexible use expeditiously.

V. Ordering Clauses

It is ordered, pursuant to sections 1, 4(i), 157, 301, 303, 307, 308, 309, 310, 316, of the Communications Act of 1934, as amended, as well as the Commercial Spectrum Enhancement Act, Public Law 108–494, 118 Stat. 3986 (Dec. 23, 2004) as amended, and the MOBILE NOW Act, Public Law 115–141, 132 Stat. 1098, Div. P, Title VI, section 603 (Mar. 23, 2018), 47 U.S.C. 151, 154(i), 157, 301, 303, 307, 308, 309, 310, 316, 923(g), and 928 and 1502, and by the Beat China by Harnessing Important, National Airwaves for 5G Act of 2020, Public Law 116–260, Division FF, Title IX, Sec. 905 that the *Second Report and Order, Order on Reconsideration, and Order of Proposed Modification is adopted.*

It is further ordered that the rules and requirements as adopted herein *are adopted*, effective sixty (60) days after publication in the **Federal Register**; and that the *Order of Proposed Modification* is applicable as of the date of publication in the **Federal Register**; provided however, that compliance with §§ 2.106, 27.14, 27.1603, 27.1605, and 27.1607 of the Commission's rules, which contain new or modified information collection requirements that require review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, is not required until those information collections are approved by OMB and the Commission announces compliance with the sections in a document published in the **Federal Register**. The Commission delegates authority to the Wireless Telecommunications Bureau to issue such document and to cause §§ 2.106, 27.14, 27.1603, 27.1605, and 27.1607 to be revised accordingly.

It is further ordered that, pursuant to sections 309 and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 309 and 316, in the *Order of Proposed Modification* the Commission proposes that the licenses and authorizations of all secondary, non-Federal radiolocation licenses in the 3.3–3.55 GHz band will be modified pursuant to the conditions specified in the *Second Report and Order* at paragraph 166. These modification conditions will be effective 60 days after publication of this *Second Report and Order, Order on Reconsideration, and Order of Proposed Modification* in the **Federal Register**, provided, however, that in the event any secondary, non-Federal radiolocation licensee who believes that its license or permit would be modified by this proposed action,

seeks to protest this proposed modification pursuant to the procedures above, the proposed license modifications specified in the *Second Report and Order, Order on Reconsideration, and Order of Proposed Modification* and contested by the licensee shall not be made final as to such licensee unless and until the Commission orders otherwise. Pursuant to section 316(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 316(a)(1), publication of the *Second Report and Order* in the **Federal Register** shall constitute notification in writing of the Commission's Order proposing the modification of the secondary, non-Federal radiolocation licenses, and of the grounds and reasons therefore, and those licenses and any other party seeking to file a protest pursuant to section 316 shall have 30 days from the date of such publication to protest such Order.

It is further ordered that, pursuant to sections 309 and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 309 and 316, that following the final modification of each secondary, non-Federal radiolocation license, the Wireless Telecommunications Bureau shall modify each such license as necessary in order to provide for its new frequency assignment.

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

List of Subjects in 47 CFR Parts 1, 2, and 27

Administrative practice and procedure, Common carriers, Communications common carriers, Radio, Table of frequency allocations, Telecommunications, Wireless communication services.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, and 27 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 § 1.907 by revising the definition of ''Covered geographic licenses'' to read as follows:

§ 1.907 Definitions.

* * * * *

Covered geographic licenses. Covered geographic licenses consist of the following services: 1.4 GHz Service (part 27, subpart I, of this chapter); 1.6 GHz Service (part 27, subpart J); 24 GHz Service and Digital Electronic Message Services (part 101, subpart G, of this chapter); 218–219 MHz Service (part 95, subpart F, of this chapter); 220–222 MHz Service, excluding public safety licenses (part 90, subpart T, of this chapter); 600 MHz Service (part 27, subpart N); 700 MHz Commercial Services (part 27, subparts F and H); 700 MHz Guard Band Service (part 27, subpart G); 800 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Broadband Service (part 27, subpart P); 3.45 GHz Service (part 27, subpart Q); 3.7 GHz Service (part 27, subpart O); Advanced Wireless Services (part 27, subparts K and L); Air-Ground Radiotelephone Service (Commercial Aviation) (part 22, subpart G, of this chapter); Broadband Personal Communications Service (part 24, subpart E, of this chapter); Broadband Radio Service (part 27, subpart M); Cellular Radiotelephone Service (part 22, subpart H); Citizens Broadband Radio Service (part 96, subpart C, of this chapter); Dedicated Short Range Communications Service, excluding public safety licenses (part 90, subpart M); Educational Broadband Service (part 27, subpart M); H Block Service (part 27, subpart K); Local Multipoint Distribution Service (part 101, subpart L); Multichannel Video Distribution and Data Service (part 101, subpart P); Multilateration Location and Monitoring Service (part 90, subpart M); Multiple Address Systems (EAs) (part 101, subpart O); Narrowband Personal Communications Service (part 24, subpart D); Paging and Radiotelephone Service (part 22, subpart E; part 90, subpart P); VHF Public Coast Stations, including Automated Maritime Telecommunications Systems (part 80, subpart J, of this chapter); Upper Microwave Flexible Use Service (part 30 of this chapter); and Wireless Communications Service (part 27, subpart D).

* * * * *

■ 3. Amend § 1.9005 by:

■ a. Removing the word ''and'' at the end of paragraph (ll);

■ b. Removing the period at the end of paragraph (mm) and adding a semicolon in its place;

■ c. Removing the period at the end of the paragraph (nn) and adding a semicolon in its place;

■ d. Removing the period at the end of paragraph (oo) and adding ''; and'' in its place; and

■ e. Adding paragraph (pp).

The addition reads as follows:

§ 1.9005 Included services.

* * * * *

(pp) The 3.45 GHz Service in the 3.45–3.55 GHz band (part 27 of this chapter).

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 4. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 5. Amend § 2.106, the Table of Frequency Allocations, by:

■ a. Revising pages 40 and 41; and

■ b. In the list of United States (US) Footnotes:

■ i. Add footnote US103 in numerical order;

■ ii. Revise footnote US108; and

■ iii. Add footnote US431B in numerical order.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

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2670-2690 FIXED 5.410 MOBILE except aeronautical mobile 5.384A Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.412	2670-2690 FIXED 5.410 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.208B 5.415 MOBILE except aeronautical mobile 5.384A Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149	2670-2690 FIXED 5.410 FIXED-SATELLITE (Earth-to-space) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (Earth-to-space) 5.351A 5.419 Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149	US205	US385	
2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.422			2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
2700-2900 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation 5.423 5.424			2700-2900 METEOROLOGICAL AIDS AERONAUTICAL RADIONAVIGATION 5.337 US18 Radiolocation G2 5.423 G15	2700-2900 5.423 US18	Aviation (87)
2900-3100 RADIOLOCATION 5.424A RADIONAVIGATION 5.426 5.425 5.427			2900-3100 RADIOLOCATION 5.424A G56 MARITIME RADIONAVIGATION 5.427 US44 US316	2900-3100 MARITIME RADIONAVIGATION Radiolocation US44 5.427 US316	Maritime (80) Private Land Mobile (90)
3100-3300 RADIOLOCATION Earth exploration-satellite (active) Space research (active) 5.149 5.428			3100-3300 RADIOLOCATION G59 Earth exploration-satellite (active) Space research (active) US342	3100-3300 Earth exploration-satellite (active) Space research (active) Radiolocation US342	Private Land Mobile (90)
3300-3400 RADIOLOCATION 5.149 5.429 5.429A 5.429B 5.430	3300-3400 RADIOLOCATION Amateur Fixed Mobile 5.149 5.429C 5.429D	3300-3400 RADIOLOCATION Amateur 5.149 5.429 5.429E 5.429F	3300-3500 RADIOLOCATION G2	3300-3450 US103 US108 US342	
3400-3600 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.430A Radiolocation 5.341	3400-3500 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.431A 5.431B Amateur Radiolocation 5.433 5.282	3400-3500 FIXED FIXED-SATELLITE (space-to-Earth) Amateur Mobile 5.432 5.432B Radiolocation 5.433 5.282 5.432A	US103 US108 US342 US431B	3450-3600 FIXED MOBILE except aeronautical mobile US103 US105 US108 US433 US431B	Wireless Communications (27) Citizens Broadband (96)

Table of Frequency Allocations			3500-5460 MHz (SHF)		Page 41
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
3400-3600 MHz: see previous page	3500-3600 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.431B Radiolocation 5.433	3500-3600 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.433A Radiolocation 5.433	3500-3550 RADIOLOCATION G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110 US103 US108 US431B	3450-3600 MHz: see previous page	
			3550-3650 RADIOLOCATION G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110 US105 US107 US245 US433	3600-3650 FIXED FIXED-SATELLITE (space-to-Earth) US107 US245 MOBILE except aeronautical mobile US105 US433	Satellite Communications (25) Citizens Broadband (96)
3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) Mobile	3600-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.434 Radiolocation 5.433	3600-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation 5.435	3650-3700 US109 US349	3650-3700 FIXED FIXED-SATELLITE (space-to-Earth) NG169 NG185 MOBILE except aeronautical mobile US109 US349	
	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile		3700-4200	3700-4000 FIXED MOBILE except aeronautical mobile NG182 NG457A	Wireless Communications (27)
				4000-4200 FIXED FIXED-SATELLITE (space-to-Earth) NG457A NG182	Satellite Communications (25)
4200-4400 AERONAUTICAL MOBILE (R) 5.436 AERONAUTICAL RADIONAVIGATION 5.438 5.437 5.439 5.440			4200-4400 AERONAUTICAL RADIONAVIGATION 5.440 US261		Aviation (87)
4400-4500 FIXED MOBILE 5.440A			4400-4940 FIXED MOBILE US113 US245 US342	4400-4500	
4500-4800 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 MOBILE 5.440A				4500-4800 FIXED-SATELLITE (space-to-Earth) 5.441 US245	
4800-4990 FIXED MOBILE 5.440A 5.441A 5.441B 5.442 Radio astronomy 5.149 5.339 5.443				4800-4940 US113 US342	
			4940-4990 5.339 US342 US385 G122	4940-4990 FIXED MOBILE except aeronautical mobile 5.339 US342 US385	Public Safety Land Mobile (90Y)
4990-5000 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY Space research (passive) 5.149			4990-5000 RADIO ASTRONOMY US74 Space research (passive) US246		

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United States (US) Footnotes

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US103 In the band 3300–3550 MHz, non-Federal stations in the radiolocation service that were licensed (or licensed pursuant to applications accepted for filing) before February 22, 2019 may continue to operate on a secondary basis until 180 days after the issuance of the first flexible-use licenses in the 3.45 GHz Service. No new assignments shall be made. In the band 3300–3500 MHz, stations in the amateur service may continue to operate on a secondary basis until new flexible-use licenses are issued for operation in the band in which they operate. Amateur operations between 3450 MHz and 3500 MHz must cease within 90 days of the public notice announcing the close of the auction for the 3.45 GHz Service. Stations in the amateur service may continue to operate in the band 3300–3450 MHz on a secondary basis while the band's future uses are finalized, but stations in the amateur service may be required to cease operations in the band 3300–3450 MHz at any time if the amateur service causes harmful interference to flexible-use operations.

* * * * *

US108 In the band 10–10.5 GHz, survey operations, using transmitters with a peak power not to exceed five watts into the antenna, may be authorized for Federal and non-Federal use on a secondary basis to other Federal radiolocation operations.

* * * * *

US431B The band 3450–3550 MHz is allocated on a primary basis to the Federal radiolocation service and to the non-Federal fixed and mobile, except aeronautical mobile, services on a nationwide basis. Federal operations in the band 3450–3550 MHz shall not cause harmful interference to non-Federal operations, except under the following circumstances.

(a) *Cooperative Planning Areas.* Cooperative Planning Areas (CPAs) are geographic locations in which non-Federal operations shall coordinate with Federal systems in the band to deploy non-Federal operations in a manner that shall not cause harmful interference to Federal systems operating in the band. In addition, operators of non-Federal stations may be required to modify their operations (*e.g.,* reduce power, filtering, adjust antenna pointing angles, shielding, *etc.*) to protect Federal operations against harmful interference and to avoid, where possible, interference and potential damage to the non-Federal operators' systems. In these areas, non-Federal operations may not claim interference protection from Federal systems. Federal and non-Federal operators may reach mutually acceptable operator-to-operator agreements to permit more extensive non-Federal use by identifying and mutually agreeing upon a technical approach that mitigates the interference risk to Federal operations. To the extent possible, Federal use in CPAs will be chosen to minimize operational impact on non-Federal users. The table in paragraph (d) of this note identifies the locations of CPAs, including, for information, those with high powered Federal operations. CPAs may also be Periodic Use Areas as described in paragraph (b) of this note. Coordination between Federal users and non-Federal licensees in CPAs shall be consistent with rules and procedures established by the FCC and NTIA.

(b) *Periodic Use Areas.* Periodic Use Areas (PUAs) are geographic locations in which non-Federal operations in the band shall not cause harmful interference to Federal systems operating in the band for episodic periods. During these times and in these areas, Federal users will require interference protection from non-Federal operations. Operators of non-Federal stations may be required to temporarily modify their operations (*e.g.,* reduce power, filtering, adjust antenna pointing angles, shielding, *etc.*) to protect Federal operations from harmful interference, which may include restrictions on non-Federal stations' ability to radiate at certain locations during specific periods of time. During such episodic use, non-Federal users in PUAs must alter their operations to avoid harmful interference to Federal systems' temporary use of the band, and during such times, non-Federal operations may not claim interference protection from Federal systems. Federal and non-Federal operators may reach mutually acceptable operator-to-operator agreements such that a Federal operator may not need to activate a PUA if a mutually agreeable technical approach mitigates the interference risk to Federal operations. To the extent possible, Federal use in PUAs will be chosen to minimize operational impact on non-Federal users. Coordination between Federal users and non-Federal licensees in PUAs shall be consistent with rules and procedures established by the FCC and NTIA. While all PUAs are co-located with CPAs, the exact geographic area used during periodic use may differ from the co-located CPA. The geographic locations of PUAs are identified in the table in paragraph (d) of this note. Restrictions and authorizations for the CPAs remain in effect during periodic use unless specifically relieved in the coordination process.

(c) For the CPA at Little Rock, AR, after approximately 12 months from the close of the auction, non-Federal operations shall coordinate with Federal systems in only the 3450–3490 MHz band segment and the 3490–3550 MHz band segment will be available for non-Federal use without coordination. At Fort Bragg, NC, non-Federal operations shall coordinate with Federal systems in only the 3450–3490 MHz band segment.

(d) The following table identifies the coordinates for the location of each CPA and PUA. An area may be represented as either a polygon made up of several corresponding coordinates or a circle represented by a center point and a radius. If a CPA has a corresponding PUA, the PUA coordinates are provided. A location marked with an asterisk (*) indicates a high-power Federal radiolocation facility. If a location includes a Shipboard Electronic Systems Evaluation Facility (SESEF) attached to a homeport, it specifies the associated SESEF.

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Table: Department of Defense Cooperative Planning Areas and Periodic Use Areas

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
Little Rock	AR	Yes	-	37° 28’ 34” 37° 42’ 55” 36° 38’ 29” 34° 57’ 57” 32° 09’ 36” 31° 51’ 52” 32° 12’ 11” 33° 42’ 22” 35° 17’ 35” 36° 12’ 18”	94° 28’ 24” 88° 54’ 36” 87° 52’ 34” 88° 09’ 26” 92° 06’ 54” 93° 10’ 35” 94° 37’ 07” 95° 49’ 52” 96° 23’ 06” 96° 08’ 46”	N/A
Yuma Complex (includes Yuma Proving Grounds and MCAS Yuma)	AZ	Yes	Yes	33° 36' 44" 34° 03' 08" 34° 03' 56" 33° 26' 54" 32° 51' 17" 32° 16' 54" 32° 14' 39" 32° 20' 06" 32° 28' 30" 32° 53' 20"	115° 10' 44" 114° 41' 08" 114° 05' 56" 113° 03' 54" 113° 02' 17" 113° 45' 54" 114° 40' 39" 114° 55' 06" 115° 02' 30" 115° 09' 20"	N/A
Camp Pendleton	CA	Yes	-	33° 21’ 46”	117° 25’25”	50
Edwards Air Force Base	CA	Yes	Yes	35° 19’ 16” 35° 17’ 54” 35° 11’ 43” 35° 00’ 52” 34° 44’ 17” 34° 34’ 16” 34° 26’ 55” 34° 28’ 59” 34° 41’ 36” 35° 07’ 32”	118° 03’ 16” 117° 26’ 54” 117° 15’ 43” 117° 10’ 52” 117° 10’ 17” 117° 19’ 16” 117° 47’ 55” 118° 16’ 59” 118° 28’ 36” 118° 25’ 32”	N/A
National Training Center	CA	Yes	Yes	36°0 3' 31" 36° 03' 09" 35° 41' 46" 35° 07' 24" 34° 42' 43" 34° 44' 22" 35° 02' 28" 35° 34' 49"	117° 00' 45" 116° 20' 43" 115° 44' 31" 115° 44' 09" 116° 17' 58" 117° 05' 19" 117° 35' 18" 117° 27' 37"	N/A
Naval Air Weapons Station, China Lake*	CA	Yes	Yes	36° 36’ 42” 35° 54’ 45” 35° 00’ 01” 34° 54’ 34” 35° 44’ 22” 36° 30’ 18”	117° 20’ 42” 116° 31’ 45” 116° 39’ 01” 117° 26’ 34” 118° 17’ 22” 118° 07’ 18”	N/A

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
Point Mugu	CA	Yes	Yes	34° 06’ 44”	119° 06’ 36”	38
San Diego* (includes Point Loma SESEF range)	CA	Yes	-	33° 4' 10" 32° 27' 19" 32° 33' 29" 32° 47' 16" 33° 1' 20" 33° 20' 36" 33° 24' 36" 32° 52' 54" 33° 04' 10"	117° 35' 40" 118° 0' 37" 116° 51' 8" 116° 28' 5" 116° 31' 5" 116° 47' 10" 117° 0' 51" 117° 9' 35" 117° 35' 40"	N/A
Twentynine Palms	CA	Yes	-	34° 06’ 44”	116° 06' 36"	75
Eglin Air Force Base (includes Santa Rosa Island & Cape San Blas site)	FL	Yes	Yes	Eglin and Santa Rosa Island: 30º 29’ 28.5” Cape San Blas: 29º 40’ 37”	Eglin and Santa Rosa Island: 86º 45’ 00” Cape San Blas: 85º 20’ 50”	35
Mayport* (includes Mayport SESEF range)	FL	Yes	-	30° 23’ 42”	81° 24’ 41”	64
Pensacola*	FL	Yes	Yes	30° 20' 50	87° 18' 40"	93
Joint Readiness Training Center	LA	Yes	Yes	31° 54' 23" 31° 50' 54" 31° 18' 13" 30° 46' 33" 30° 29' 14" 30° 46' 22" 31° 25' 16"	93° 20' 53" 92° 52' 46" 92° 26' 31" 92° 28' 32" 93° 4' 1" 93° 41' 26" 94° 3' 19"	N/A
Chesapeake Beach*	MD	Yes	Yes	38° 39' 24"	76° 31' 41"	95
Naval Air Station, Patuxent River CPA	MD	Yes	Yes	38° 26' 22" 38° 51' 51" 38° 28' 11" 38° 03' 40" 37° 45' 33" 37° 34' 34" 37° 38' 10" 38° 09' 32" 38° 18' 46" 38° 26' 59"	76° 14' 12" 75° 48' 34" 75° 28' 53" 75° 30' 31" 75° 45' 50" 76° 20' 09" 76° 44' 37" 76° 29' 28" 76° 34' 36" 76° 26' 27"	N/A
PUA				38° 33’ 38” 39° 11’ 10” 38° 38’ 51” 37° 52’ 13” 37° 29’ 44” 37° 10’ 24” 37° 20’ 05” 38° 01’ 11” 38° 20’ 54” 38° 35’ 47”	76° 07’ 29” 75° 29’ 28” 75° 00’ 40” 75° 03’ 24” 75° 22’ 25” 76° 16’ 42” 77° 06’ 52” 76° 36’ 06” 76° 46’ 41” 76° 30’ 02”	
St. Inigoes*	MD	Yes	Yes	38° 08' 41"	76° 26' 03"	87

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
Bath*	ME	Yes	Yes	44° 02' 29" 43° 52' 27" 43° 48' 53" 43° 32' 50" 43° 27' 16" 43° 44' 26" 43° 54' 57" 44° 06' 56" 44° 17' 2" 44° 26' 54" 44° 36' 16" 44° 33' 45" 44° 57' 05" 44° 56' 27" 44° 32' 13" 44° 24' 08" 44° 02' 29"	70° 10' 41" 70° 10' 29" 70° 01' 6" 69° 57' 30" 69° 42' 52" 69° 13' 52" 69° 24' 50" 69° 25' 13" 69° 16' 56" 69° 45' 13" 69° 56' 50" 70° 04' 01" 70° 14' 55" 70° 19' 38" 70° 08' 17" 70° 36' 36" 70° 10' 41"	N/A
Pascagoula*	MS	Yes	Yes	30° 20' 42"	88° 34' 17"	80
Camp Lejeune	NC	Yes	-	34° 37’ 51”	77° 24’ 28”	54
Cherry Point	NC	Yes	-	34° 54’ 57”	76° 53’ 24”	38
Fort Bragg	NC	Yes	-	37° 35’ 01” 37° 45’ 56” 37° 22’ 33” 36° 38’ 56” 34° 43’ 13” 33° 29’ 44” 33° 24’ 04” 34° 01’ 05” 35° 27’ 24” 36° 27’ 46”	79° 31’ 19” 77° 14’ 14” 76° 18’ 30” 75° 51’ 26” 76° 15’ 37” 78° 29’ 53” 80° 29’ 07” 81° 23’ 49” 81° 37’ 00” 81° 22’ 49”	N/A

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
Portsmouth*	NH	Yes	Yes	42° 23' 06"	71° 10' 23"	N/A
				42° 25' 05"	71° 05' 43"	
				42° 21' 36"	71° 00' 54"	
				42° 18' 28"	70° 54' 35"	
				42° 13' 01"	70° 44' 53"	
				42° 06' 30"	70° 41' 11"	
				42° 02' 54"	70° 37' 44"	
				42° 08' 03"	70° 33' 35"	
				42° 10' 25"	70° 20' 54"	
				42° 15' 39"	70° 02' 39"	
				42° 22' 44"	69° 48' 42"	
				42° 34' 56"	69° 36' 01"	
				42° 52' 26"	69° 26' 24"	
				43° 13' 48"	69° 28' 18"	
				43° 31' 21"	69° 40' 13"	
				43° 45' 21"	70° 01' 31"	
				43° 59' 20"	70° 30' 21"	
				43° 36' 10"	70° 52' 5"	
				43° 49' 27"	71° 15' 22"	
				43° 27' 40"	71° 24' 47"	
				43° 00' 57"	71° 53' 01"	
				42° 44' 40"	71° 56' 37"	
				42° 51' 47"	71° 27' 07"	
				42° 33' 46"	71° 27' 12"	
				42° 24' 24"	71° 21' 10"	
				42° 23' 06"	71° 10' 23"	
Moorestown*	NJ	Yes	Yes	40° 27' 26"	75° 42' 60"	N/A
				40° 02' 54"	75° 55' 12"	
				39° 48' 19"	75° 55' 55"	
				39° 38' 27"	75° 51' 48"	
				39° 24' 59"	75° 21' 41"	
				39° 17' 18"	74° 54' 09"	
				39° 22' 16"	74° 27' 56"	
				39° 29' 35"	74° 12' 59"	
				39° 54' 43"	74° 00' 05"	
				40° 15' 03"	74° 06' 20"	
				40° 23' 29"	74° 08' 28"	
				40° 42' 46"	74° 21’ 54"	
				40° 50' 59"	74° 31' 36"	
				40° 52' 49"	74° 42' 53"	
				40° 47' 42"	75° 03' 00"	
				40° 33' 25"	75° 28' 15"	
				40° 27' 26"	75° 42' 60"	

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
White Sands Missile Range	NM	Yes	Yes	34° 35' 05" 34° 43' 50" 34° 43' 17" 34° 26' 28" 32° 36' 02" 31° 45' 47" 31° 18' 18" 31° 27' 23" 32° 38' 49" 33° 32' 40"	107° 06' 05" 106° 46' 50" 106° 03' 17" 105° 26' 28" 104° 55' 02" 105° 22' 47" 106° 06' 18" 106° 54' 23" 107° 25' 49" 107° 27' 40"	N/A
Nevada Test and Training Range	NV	Yes	Yes	35° 58' 48" 36° 38' 22" 36° 22' 37" 36° 54' 03" 37° 58' 01" 38° 59' 48" 38° 58' 35" 37° 52' 34" 36° 20' 30" 36° 21' 15"	115° 31' 55" 116° 23' 51" 117° 41' 35" 117° 59' 18" 118° 01' 17" 116° 46' 01" 114° 49' 25" 113° 35' 46" 113° 39' 51" 115° 14' 23"	N/A
Fort Sill	OK	Yes	Yes	35° 03' 39" 35° 10' 31" 34° 42' 54" 34° 13' 49" 34° 13' 46" 34° 38' 26"	99° 02' 38" 98° 05' 47" 97° 45' 20" 98° 05' 49" 98° 56' 09" 99° 16' 57"	N/A
Tobyhanna Army Depot	PA	Yes	-	41° 30' 25" 41° 38' 51" 41° 31' 41" 41° 11' 31" 40° 52' 07" 40° 44' 53" 40° 51' 43" 41° 07' 40"	75° 51' 60" 75° 26' 33" 75° 1' 39" 74° 50' 07" 75° 1' 2" 75° 23' 50" 75° 48' 52" 76° 00' 38"	N/A

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
Dahlgren*	VA	Yes	Yes	38° 23' 10" 38° 41' 25" 38° 46' 14" 38° 49' 37" 38° 50' 16" 38° 46' 30" 38° 49' 42" 38° 54' 42" 38° 55' 37" 38° 56' 05" 38° 44' 45" 38° 44' 22" 38° 35' 14" 38° 51' 04" 38° 26' 52" 38° 22' 59" 37° 59' 27" 37° 47' 08" 37° 54' 01" 38° 23' 10"	76° 23' 21" 76° 35' 56" 76° 44' 44" 76° 54' 57" 76° 58' 18" 77° 01' 57" 77° 04' 08" 77° 7' 35" 77° 12' 04" 77° 23' 5" 77° 25' 23" 77° 28' 48" 77° 36' 11" 78° 12' 06" 78° 29' 02" 77° 42' 19" 77° 28' 26" 76° 53' 47" 76° 06' 14" 76° 23' 21"	N/A
Newport News*	VA	Yes	Yes	36° 58' 24"	76° 26' 07"	93
Norfolk* (includes Fort Story SESEF range)	VA	Yes	-	36° 56’ 24”	76° 19’ 55”	74
Wallops Island*	VA	Yes	Yes	37° 51' 25"	75° 27' 59"	76
Bremerton*	WA	Yes	Yes	47° 28' 40" 47° 31' 16" 47° 31' 13" 47° 34' 12" 47° 45' 36" 47° 59' 07" 48° 12' 20" 47° 39' 46" 47° 39' 12" 47° 45' 23" 47° 44' 48" 47° 57' 40" 47° 31' 15" 47° 35' 53" 47° 27' 33" 47° 27' 07" 47° 24' 25" 47° 23' 07" 47° 28' 33" 46° 50' 25" 46° 53' 09" 47° 28' 40"	122° 31' 22" 122° 31' 26" 122° 32' 37" 122° 31' 52" 121° 32' 28" 121° 34' 09" 121° 44' 51" 122° 29' 60" 122° 34' 35" 122° 38' 09" 122° 45' 18" 122° 59' 06" 123° 16' 23" 122° 49' 28" 122° 55' 25" 122° 46' 16" 122° 42' 48" 122° 39' 18" 122° 33' 44" 121° 49' 24" 121° 44' 01" 122° 31' 22"	N/A

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
Everett* (includes Ediz Hook SESEF range)	WA	Yes	-	47° 51' 11" 47° 25' 13" 47° 54' 45" 47° 36' 60" 47° 51' 57" 48° 35' 49" 48° 00' 8" 47° 51' 10"	122° 57' 47" 123° 18' 6" 122° 10' 13" 121° 37' 60" 121° 22' 57" 122° 08' 13" 123° 29' 33" 122° 57' 47"	N/A

BILLING CODE 6712–01–C

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PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 6. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

■ 7. Amend § 27.1 by adding paragraph (b)(17) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(17) 3450–3550 MHz.

* * * * *

■ 8. Amend § 27.4 by adding in alphabetical order the definition for ''3.45 GHz Service'' to read as follows:

§ 27.4 Terms and definitions.

3.45 GHz Service. A radiocommunication service licensed under this part for the frequency bands specified in § 27.5(o) (3450–3550 MHz band).

* * * * *

■ 9. Amend § 27.5 by adding paragraph (o) to read as follows:

§ 27.5 Frequencies.

* * * * *

(o) *3450–3550 MHz band.* The 3.45 GHz Service is licensed as ten individual 10 megahertz blocks available for assignment in the contiguous United States on a Partial Economic Area basis, *see* § 27.6(n).

■ 10. Amend § 27.6 by adding paragraph (n) to read as follows:

§ 27.6 Service areas.

* * * * *

(n) *3450–3550 MHz Band.* Service areas in the 3.45 GHz Service are based on Partial Economic Areas (PEAs) as defined by appendix A to this subpart.

■ 11. Amend § 27.11 by adding paragraph (m) to read as follows:

§ 27.11 Initial authorization.

* * * * *

(m) *3450–3550 MHz band.* Authorizations for licenses in the 3.45 GHz Service will be based on Partial Economic Areas (PEAs), as specified in § 27.6(n), and the frequency blocks specified in § 27.5(o).

■ 12. Amend § 27.13 by adding paragraph (o) to read as follows:

§ 27.13 License period.

* * * * *

(o) *3450–3550 MHz Band.* Authorizations for licenses in the 3.45 GHz Service in the 3450–3550 MHz band will have a term not to exceed fifteen (15) years from the date of issuance.

■ 13. Amend § 27.14 by revising the first sentences of paragraphs (a) and (k) and adding paragraph (w) to read as follows:

§ 27.14 Construction requirements.

(a) AWS and WCS licensees, with the exception of WCS licensees holding authorizations for the 600 MHz band, Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Block C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, Block A in the 2305–2310 MHz and 2350–2355 MHz bands, Block B in the 2310–2315 MHz and 2355–2360 MHz bands, Block C in the 2315–2320 MHz band, Block D in the 2345–2350 MHz band, in the 3450–3550 MHz band, and in the 3700–3980 MHz band, and with the exception of licensees holding AWS authorizations in the 1915–1920 MHz and 1995–2000 MHz bands, the 2000–2020 MHz and 2180–2200 MHz bands, or 1695–1710 MHz, 1755–1780 MHz and 2155–2180 MHz bands, must, as a performance requirement, make a showing of ''substantial service'' in their license area within the prescribed license term set forth in § 27.13. * * *

* * * * *

(k) Licensees holding WCS or AWS authorizations in the spectrum blocks enumerated in paragraphs (g), (h), (i), (q), (r), (s), (t), (v), and (w) of this section, including any licensee that obtained its license pursuant to the procedures set forth in paragraph (j) of this section, shall demonstrate compliance with performance requirements by filing a construction notification with the Commission, within 15 days of the expiration of the applicable benchmark, in accordance with the provisions set forth in § 1.946(d) of this chapter. * * *

* * * * *

(w) The following provisions apply to any licensee holding an authorization in the 3450–3550 MHz band:

(1) *Performance requirements.* Licensees in the 3.45 GHz Service must meet the following benchmarks, based on the type of service they provide.

(i) *Mobile/point-to-multipoint service.* Licensees relying on mobile or point-to-multipoint service shall provide reliable signal coverage and offer service within four (4) years from the date of the initial license to at least forty-five (45) percent of the population in each of its license areas (''First Performance Benchmark''). Licensees shall provide reliable signal coverage and offer service within eight (8) years from the date of the initial license to at least eighty (80) percent of the population in each of its license areas (''Second Performance Benchmark'').

(ii) *Point-to-point service.* Licensees relying on point-to-point service shall demonstrate within four (4) years of the license issue date that, if the population within the license area is equal to or less than 268,000, they have four links operating and either provide service to customers or for internal use. If the population is greater than 268,000, they shall demonstrate they have at least one link in operation and either provide service to customers or for internal use per every 67,000 persons within a license area (''First Performance Benchmark''). Licensees shall demonstrate within eight (8) years of the

license issue date that, if the population within license area is equal to or less than 268,000, they have eight links operating and either provide service to customers or for internal use. If the population within the license area is greater than 268,000, they shall demonstrate they have at least two links in operation and either provide service to customers or for internal use per every 67,000 persons within a license area (''Second Performance Benchmark'').

(iii) *Internet of Things service.* Licensees offering Internet of Things-type services shall provide geographic area coverage within four (4) years from the date of the initial license to thirty-five (35) percent of the license (''First Performance Benchmark''). Licensees shall provide geographic area coverage within eight (8) years from the date of the initial license to sixty-five (65) percent of the license (''Second Performance Benchmark'').

(2) *Failure to meet performance requirements.* If a licensee fails to establish that it meets the First Performance Benchmark for a particular license area in paragraph (w)(1) of this section, the licensee's Second Performance Benchmark deadline and license term in paragraph (w)(1) of this section will be reduced by one year. If a licensee fails to establish that it meets the Second Performance Benchmark for a particular license area, its authorization for each license area in which it fails to meet the Second Performance Benchmark shall terminate automatically without Commission action, and the licensee will be ineligible to regain it if the Commission makes the license available at a later date.

(3) *Compliance procedures.* To demonstrate compliance with the performance requirements in paragraph (w)(1) of this section, licensees shall use the most recently available decennial U.S. Census Data at the time of measurement and shall base their measurements of population or geographic area served on areas no larger than the Census Tract level. The population or area within a specific Census Tract (or other acceptable identifier) will be deemed served by the licensee only if it provides reliable signal coverage to and offers service within the specific Census Tract (or other acceptable identifier). To the extent the Census Tract (or other acceptable identifier) extends beyond the boundaries of a license area, a licensee with authorizations for such areas may include only the population or geographic area within the Census Tract (or other acceptable identifier) towards meeting the performance requirement of a single, individual license. If a licensee does not provide reliable signal coverage to an entire license area, the license must provide a map that accurately depicts the boundaries of the area or areas within each license area not being served. Each licensee also must file supporting documentation certifying the type of service it is providing for each licensed area within its service territory and the type of technology used to provide such service. Supporting documentation must include the assumptions used to create the coverage maps, including the propagation model and the signal strength necessary to provide reliable service with the licensee's technology.

■ 14. Amend § 27.50 by adding paragraph (k) to read as follows:

§ 27.50 Power limits and duty cycle.

* * * * *

(k) The following power requirements apply to stations transmitting in the 3450–3550 MHz band:

(1) The power of each fixed or base station transmitting in the 3450–3550 MHz band and located in any county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, is limited to an equivalent isotropically radiated power (EIRP) of 3280 Watts/MHz. This limit applies to the aggregate power of all antenna elements in any given sector of a base station.

(2) The power of each fixed or base station transmitting in the 3450–3550 MHz band and situated in any geographic location other than that described in paragraph (k)(1) of this section is limited to an EIRP of 1640 Watts/MHz. This limit applies to the aggregate power of all antenna elements in any given sector of a base station.

(3) Mobile devices are limited to 1Watt (30 dBm) EIRP. Mobile devices operating in these bands must employ a means for limiting power to the minimum necessary for successful communications.

(4) Equipment employed must be authorized in accordance with the provisions of § 27.51. Power measurements for transmissions by stations authorized under this section may be made either in accordance with a Commission-approved average power technique or in compliance with paragraph (k)(5) of this section. In measuring transmissions in this band using an average power technique, the peak-to-average ratio (PAR) of the transmission may not exceed 13 dB.

(5) Peak transmit power must be measured over any interval of continuous transmission using instrumentation calibrated in terms of an rms-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, sensitivity, and any other relevant factors, so as to obtain a true peak measurement for the emission in question over the full bandwidth of the channel.

■ 15. Amend § 27.53 by redesignating paragraph (n) as paragraph (o) and adding new paragraph (n) to read as follows:

§ 27.53 Emission limits.

* * * * *

(n) *3.45 GHz Service.* The following emission limits apply to stations transmitting in the 3450–3550 MHz band:

(1) For base station operations in the 3450–3550 MHz band, the conducted power of any emission outside the licensee's authorized bandwidth shall not exceed −13 dBm/MHz. Compliance with the provisions of this paragraph (n)(1) is based on the use of measurement instrumentation employing a resolution bandwidth of 1 megahertz or greater. However, in the 1 megahertz bands immediately outside and adjacent to the licensee's frequency block, a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed, but limited to a maximum of 200 kHz. The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power. Notwithstanding the channel edge requirement of −13 dBm per megahertz, for base station operations in the 3450–3550 MHz band, the conducted power of any emission below 3440 MHz or above 3560 MHz shall not exceed −25 dBm/MHz, and the conducted power of emissions below 3430 MHz or above 3570 MHz shall not exceed −40 dBm/MHz.

(2) For mobile operations in the 3450–3550 MHz band, the conducted power of any emission outside the licensee's authorized bandwidth shall not exceed −13 dBm/MHz. Compliance with this paragraph (n)(2) is based on the use of measurement instrumentation employing a resolution bandwidth of 1 megahertz or greater. However, in the 1 megahertz bands immediately outside and adjacent to the licensee's frequency

block, a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed, but limited to a maximum of 200 kHz. In the bands between 1 and 5 MHz removed from the licensee's frequency block, the minimum resolution bandwidth for the measurement shall be 500 kHz. The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power.

* * * * *

■ 16. Amend § 27.55 by adding paragraph (e) to read as follows:

§ 27.55 Power strength limits.

* * * * *

(e) *Power flux density for stations operating in the 3450–3550 MHz band.* For base and fixed stations operation in the 3450–3550 MHz band in accordance with the provisions of § 27.50(k), the power flux density (PFD) at any location on the geographical border of a licensee's service area shall not exceed −76 dBm/m^2/MHz. This power flux density will be measured at 1.5 meters above ground. Licensees in adjacent geographic areas may voluntarily agree to operate under a higher PFD at their common boundary.

■ 17. Amend § 27.57 by revising paragraph (c) to read as follows:

§ 27.57 International coordination.

* * * * *

(c) Operation in the 1695–1710 MHz, 1710–1755 MHz, 1755–1780 MHz, 1915–1920 MHz, 1995–2000 MHz, 2000–2020 MHz, 2110–2155 MHz, 2155–2180 MHz, 2180–2200 MHz, 3450–3550 MHz, and 3700–3980 MHz bands is subject to international agreements with Mexico and Canada.

■ 18. Amend § 27.75 by adding paragraph (a)(4) to read as follows:

§ 27.75 Basic interoperability requirement.

(a) * * *

(4) Mobile and portable stations that operate on any portion of frequencies in the 3450–3550 MHz band must be capable of operating on all frequencies in the 3450–3550 MHz band using the same air interfaces that the equipment utilizes on any frequencies in the 3450–3550 MHz band.

* * * * *

■ 19. Add subpart Q, consisting of §§ 27.1600 through 27.1607, to read as follows:

Subpart Q—3.45 GHz Service (3450–3550 MHz)

Sec.

27.1600 3450–3550 MHz band subject to competitive bidding.
27.1601 Designated entities in the 3450–3550 MHz band.
27.1602 Incumbent Federal operations.
27.1603 Coordination procedures.
27.1604 Reimbursement of relocation expenses of non-Federal radiolocation incumbents.
27.1605 Reimbursement clearinghouse.
27.1606 Aggregation of 3450–3550 MHz band licenses.
27.1607 Information sharing for time division duplex synchronization.

§ 27.1600 3450–3550 MHz band subject to competitive bidding.

Mutually exclusive initial applications for 3450–3550 MHz band licenses are subject to competitive bidding. The general competitive bidding procedures set forth in 47 CFR part 1, subpart Q, will apply unless otherwise provided in this subpart.

§ 27.1601 Designated entities in the 3450–3550 MHz band.

(a) *Eligibility for small business provisions*—(1) *Definitions*—(i) *Small business.* A small business is an entity that, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, has average gross revenues not exceeding $55 million for the preceding five (5) years.

(ii) *Very small business.* A very small business is an entity that, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, has average gross revenues not exceeding $20 million for the preceding five (5) years.

(2) *Bidding credits.* A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses as provided in § 1.2110(c)(6) of this chapter, may use the bidding credit of 15 percent, as specified in § 1.2110(f)(2)(i)(C) of this chapter, subject to the cap specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses as provided in § 1.2110(c)(6) of this chapter, may use the bidding credit of 25 percent, as specified in § 1.2110(f)(2)(i)(B) of this chapter, subject to the cap specified in § 1.2110(f)(2)(ii) of this chapter.

(b) *Eligibility for rural service provider bidding credit.* A rural service provider, as defined in § 1.2110(f)(4)(i) of this chapter, that has not claimed a small business bidding credit, or a consortium of rural service providers as provided in § 1.2110(c)(6) of this chapter, may use the bidding credit of 15 percent specified in § 1.2110(f)(4) of this chapter.

§ 27.1602 Incumbent Federal operations.

Regarding incumbent Federal operations in the 3450–3550 MHz band, 3.45 GHz Service licensees must comply with footnote US431B of the Table of Frequency Allocations in 47 CFR 2.106.

§ 27.1603 Coordination procedures.

(a) *Coordination requirement.* Prior to operation of any 3.45 GHz Service license in a Cooperative Planning Area or Periodic Use Area, a 3.45 GHz Service licensee must successfully coordinate such operation with any Federal incumbents in the Cooperative Planning Area or Periodic Use Area. The coordination procedures contained in this section shall apply unless the 3.45 GHz Service licensee and the Federal incumbent(s) have reached a mutually acceptable operator-to-operator coordination agreement that provides otherwise.

(b) *Informal discussions.* Before a 3.45 GHz Service licensee submits a formal coordination request, it may share and discuss draft proposals with Federal incumbent coordination staff. These discussions are voluntary, informal, and non-binding and can begin at any time.

(c) *Formal coordination.* The 3.45 GHz Service licensee shall initiate coordination by formally requesting access to operate within a Cooperative Planning Area and/or Periodic Use Area directly through the Department of Defense's online portal.

(d) *Initiation, timing, and affirmative concurrence.* A 3.45 GHz Service licensee must initiate a formal coordination request through the online portal provided by the Department of Defense. Unless otherwise agreed between a 3.45 GHz Service licensee and the relevant Federal incumbent(s), no formal coordination requests may be submitted until nine (9) months after the date of the auction closing Public Notice. 3.45 GHz Service licensees may request informal discussions (through the point of contact identified in the applicable Transition Plan) during this nine-month time period. Unless otherwise agreed to in writing, the requirement to reach a coordination arrangement is satisfied only by obtaining the affirmative concurrence of the relevant Federal incumbent(s) via the portal. The requirement of this paragraph (d) is not satisfied by omission.

(e) *Submission information.* To submit a formal coordination request, the 3.45 GHz Service licensee must include information about the technical

characteristics for the 3.45 GHz Service base stations and associated mobile units relevant to operation within the Cooperative Planning Area and/or Periodic Use Area. This information should be provided in accordance with the instructions provided in the portal user's guide provided by the Department of Defense. 3.45 GHz Service licensees must prioritize their deployments in the Cooperative Planning Area for each Federal incumbent when submitting a formal coordination request. If a 3.45 GHz Service licensee is seeking to coordinate with multiple systems or multiple locations of operation controlled by one Federal incumbent, the licensee must specify the order in which it prefers the Federal incumbent process the request (*i.e.,* the order of systems or geographic locations).

(f) *Coordination analysis.* If a 3.45 GHz Service licensee has questions about the result of a coordination request, it may contact the Federal incumbent to propose network design modifications to help address issues raised by the Federal incumbent. Once the 3.45 GHz Service licensee has revised its network design, it must resubmit a formal coordination request, and the 3.45 GHz Service formal coordination process begins again.

(g) *Interference resolution process.* In instances of identified harmful interference occurring between a Federal and non-Federal operator not otherwise addressed by the coordination procedures or operator-to-operator agreements, the 3.45 GHz Service licensee shall first attempt to resolve the interference directly. If that effort is unsuccessful, the 3.45 GHz Service licensee, if adversely affected may escalate the matter to the Commission.

§ 27.1604 Reimbursement of relocation expenses of non-Federal radiolocation incumbents.

(a) *Relocation reimbursement contribution.* Each entity granted an initial license (not a renewal) in the 3.45 GHz Service (Licensee) must pay a *pro rata* portion to reimburse the costs incurred by authorized non-Federal, secondary radiolocation licensees for relocating from the 3.3–3.55 GHz band. These costs include the cost of a clearinghouse's administration of the reimbursement, which the radiolocation licensees will pay initially and include in their reimbursable costs.

(b) *Pro rata share.* A Licensee's *pro rata* share of relocation costs will be determined by dividing the total actual costs of such relocation, as approved by the clearinghouse selected pursuant to § 27.1605, by the total number of 3.45 GHz Service licenses granted, multiplied by the number of such licenses the Licensee will hold.

(c) *Timing of payment.* A Licensee's relocation reimbursement contribution share must be paid to the clearinghouse by the date(s) and subject to procedures specified by public notice.

§ 27.1605 Reimbursement clearinghouse.

(a) The clearinghouse ultimately selected shall determine the reimbursement obligations of each Licensee pursuant to § 27.1604.

(1) The clearinghouse must be a must be a neutral, independent entity with no conflicts of interest (as defined in § 27.1414(b), on the part of the organization or its officers, directors, employees, contractors, or significant subcontractors.

(2) The clearinghouse must be able to demonstrate that it has the requisite expertise to perform the duties required, which will include collecting and distributing reimbursement payments, auditing incoming and outgoing estimates, mitigating cost disputes among parties, and generally acting as a clearinghouse.

(3) The clearinghouse must comply with, on an ongoing basis, all applicable laws and Federal Government guidance on privacy and information security requirements such as relevant provisions in the Federal Information Security Management Act, National Institute of Standards and Technology publications, and Office of Management and Budget guidance.

(4) The clearinghouse must provide quarterly reports to the Wireless Telecommunications Bureau that detail the status of reimbursement funds available, the payments issued, the amounts collected from licensees, and any information filed by incumbents. The reports must account for all funds spent, including the clearinghouse's own expenses. The report shall include descriptions of any disputes and the manner in which they were resolved.

(b) Non-Federal secondary radiolocation licensees in the 3.3–3.55 GHz band that seek reimbursement of their expenses for relocating operations authorized under their licenses and existing as of February 22, 2019, must submit invoices or other appropriate documentation of such expenses to the clearinghouse no later than a date to be specified by public notice.

(c) Expenses must be reasonably related to the relocation from the 3.3–3.55 GHz band to the 2.9–3.0 GHz band, may be future expenses or expenses already incurred—including the clearinghouse's costs, and no expenses for other purposes will be subject to reimbursement. Ineligible expenses include, but are not limited to, those related to upgrades or improvements. The clearinghouse shall have the authority to determine whether particular expenses are eligible for reimbursement.

(d) The Wireless Telecommunications Bureau is responsible for resolving any disputes arising from decisions by the clearinghouse and shall specify by public notice when the clearinghouse's responsibilities have terminated.

§ 27.1606 Aggregation of 3450–3550 MHz band licenses.

(a) 3.45 GHz Service licensees may aggregate up to 40 megahertz of 3450–3550 MHz band licenses across both license categories in any service area at any given time for four years after the close of the auction. After four years post-auction, no such aggregation limit on 3450–3550 MHz licenses shall apply.

(b) The criteria in § 20.22(b) of this chapter will apply in order to attribute partial ownership and other interests for the purpose of applying the aggregation limit in paragraph (a) of this section.

§ 27.1607 Information sharing for time division duplex synchronization.

(a) 3.45 GHz Service licensees must provide information to requesting Citizens Broadband Radio Service (part 96 of this chapter) operators to enable time division duplex (TDD) synchronization. Negotiations over the information must be conducted in good faith, with the goal of enabling synchronization between the relevant systems.

(1) A Citizens Broadband Radio Service operator, whether a Priority Access Licensee or a General Authorized Access user (§ 96.1(b) of this chapter), may request information from a 3.45 GHz Service licensee to enable cross-service TDD synchronization if it provides service, or intends to provide service, in the same or adjacent geographic area as a 3.45 GHz Service licensee.

(2) Upon request by an eligible Citizens Broadband Radio Service operator, the 3.45 GHz Service licensee must provide sufficient technical information to allow the Citizens Broadband Radio Service operator to synchronize its system with the 3.45 GHz band system. The 3.45 GHz Service licensee must keep this information current if its network operations change.

(b) 3.45 GHz Service licensees are under no obligation to make any changes to their operations or proposed

operations to enable TDD synchronization.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2018–0050; FF09E21000 FXES11110900000 212]

RIN 1018–BD15

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

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the candy darter (*Etheostoma osburni*) under the Endangered Species Act (Act). In total, approximately 593 stream kilometers (368 stream miles) in Virginia and West Virginia fall within the boundaries of the critical habitat designation. The effect of this final rule is to designate critical habitat under the Act for the candy darter, an endangered species of fish.

DATES: This rule becomes effective on May 7, 2021.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* in Docket No. FWS–R5–ES–2018–0050 or at *https://www.fws.gov/northeast/candydarter* and at the West Virginia Ecological Services Field Office. Comments and materials we received, as well as some supporting documentation we used in preparing this rule, are available for public inspection in the docket at *http://www.regulations.gov.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, West Virginia Ecological Services Field Office, 90 Vance Drive, Elkins, WV, 26241; telephone 304–636–6586.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.regulations.gov* at Docket No. FWS–R5–ES–2018–0050, and at the West Virginia Ecological Services Field Office, *https://www.fws.gov/westvirginiafieldoffice/index.html* (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the U.S. Fish and Wildlife Service website and field office set out above, and may also be included in the preamble and at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Acting Field Supervisor, U.S. Fish and Wildlife Service, West Virginia Ecological Services Field Office, 90 Vance Drive, Elkins, WV 26241; telephone 304–636–6586. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. This document is a final rule to designate critical habitat for the candy darter. Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can be completed only by issuing a rule.

We listed the candy darter as an endangered species on November 21, 2018 (83 FR 58747). Also, on November 21, 2018, we published in the **Federal Register** a proposed critical habitat designation for candy darter (83 FR 59232). Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

What this document does. This document is a final rule that designates critical habitat necessary for the conservation of the candy darter. The critical habitat areas we are designating in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for candy darter. We are designating a total of approximately 593 stream kilometers (368 stream miles) of rivers and streams in Virginia and West Virginia for the candy darter.

Peer review and public comment. Our designation is based on the best scientific data available in our peer-reviewed species status assessment (SSA) report. The SSA was used to inform the decisionmaking process of the proposed and final listing rules (82 FR 46197 and 83 FR 58747, respectively) and proposed and final critical habitat designations (83 FR 59232 and this rule, respectively). For further detail on the responses from peer reviewers, see the final rule listing the candy darter as an endangered species (83 FR 58747). We also considered all comments and information received from the public during the comment period for the proposed designation of critical habitat. Information we received from public comment is incorporated in this final designation of critical habitat, as appropriate, or addressed below in Summary of Comments and Recommendations.

Previous Federal Actions

We proposed the candy darter for listing on October 4, 2017 (82 FR 46197), and finalized the listing on November 21, 2018 (83 FR 58747). As such, the candy darter is included as an endangered species on the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h). We also proposed to designate critical habitat for the candy darter on November 21, 2018 (83 FR 59232). For information on any actions prior to these rules, refer to the proposed listing rule.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the candy darter (83 FR 59232) during an open comment period that opened on November 21, 2018, and closed on January 22, 2019. We did not receive any requests for a public hearing. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and draft economic analysis during these comment periods.

During the comment period, we received 14 comment letters directly addressing the proposed critical habitat designation. All substantive information provided during the comment period has been grouped into general issues specifically relating to the proposed critical habitat designation for the candy darter and either incorporated directly into this final determination, as appropriate, or addressed below in the following summary.

In addition, some of the 14 substantive comments directly related to the critical habitat designation also contained suggestions that were applicable to general recovery issues for

the candy darter, but not directly related to the critical habitat designation (*i.e.,* meaning these comments are outside the scope of the critical habitat rule). These general comments included topics such as the use of reintroductions or translocations, specific areas for high-quality reintroduction sites, riparian vegetation management to address the effects of climate change on water temperature in candy darter streams, and baitfish regulations. While these comments may not be directly incorporated into the critical habitat rule, we have noted the suggestions and look forward to working with our partners on these topics during recovery planning for the candy darter.

Comments From Federal Agencies

(1) Comment: The U.S. Forest Service (USFS), the West Virginia Department of Natural Resources (DNR), and several public commenters suggested that reintroductions or translocations or both would be important conservation strategies for the candy darter. Some commenters suggested specific areas that would represent high-quality reintroduction sites.

Our response: During recovery planning and implementation for the candy darter, we will work collaboratively with our partners and all stakeholders to recover the species. Translocation into historically occupied habitats is consistent with the recovery strategy laid out in the Candy Darter Recovery Outline (Service 2019, entire). We appreciate the support of our partners in this regard and will continue to work with them to determine appropriate locations to implement this strategy, monitor the success of these efforts, and manage these populations as needed.

(2) Comment: The USFS urged us to consider that designating critical habitat might mandate conservation measures beneficial to the candy darter but perhaps be detrimental to the overall aquatic ecosystem (*e.g.,* maintaining or adding barriers to fish passage).

Our response: Barriers to fish passage may reduce the spread of variegate darters (*Etheostoma variatum*), the primary threat to candy darters, within candy darter habitats. However, the designation of critical habitat will not result in the mandate to install any passage barriers. Any proposals to install or remove fish passage barriers would be evaluated on a case-by-case basis for their potential effects to the candy darter and its critical habitat, as well as for the overall conservation benefits and effects to other ecosystem functions.

(3) Comment: The USFS asked us to clarify and recognize that the areas of ongoing hybridization between variegate darters and candy darters may change.

Our response: Occupied habitat for the candy darter are those areas where individual fish with pure candy darter alleles were found based on the most recent survey results. We recognize that the zone of hybridization may change over time and that pure candy darters may become extirpated from some portions of currently occupied habitat in the future. However, maintaining existing populations is important to the survival and recovery of the species. Therefore, designation of occupied habitat as it occurs at the time of listing is appropriate. Critical habitat can be revised in the future if substantial new information becomes available that would suggest certain areas should be added or removed.

(4) Comment: The USFS asked to us to acknowledge the importance of Forest Service Watershed Restoration Action Plans (and other conservation actions ongoing in national forests) within the range of the candy darter and expressed interest in discussing potential effects of critical habitat designations on land management activities.

Our response: We acknowledge the significant conservation contributions that the USFS has made to protecting and enhancing candy darter habitat and its surrounding watershed. We also recognize that there are section 7 consultation requirements as a result of the listing of the candy darter and the designation of critical habitat. We will continue to work collaboratively with the USFS to address these workload concerns and to determine what additional avoidance, minimization, and conservation measures are appropriate for the species.

(5) Comment: The USFS suggested that we consider whether or not the designation of critical habitat may increase the risk of malicious introductions of nonnative fish into candy darter streams.

Our response: We are not aware of any efforts to maliciously introduce nonnative fish in candy darter waters. The designation of critical habitat may increase public awareness of the importance of these watersheds and encourage the development of education and outreach about baitfish regulations. We are working with the West Virginia DNR to revise regulations to reduce the potential for baitfish introductions with the aim of increasing awareness and enforcement on this issue.

(6) Comment: The USFS and one public commenter raised concerns that climate change may cause widespread changes in vegetation in the riparian areas that would result in higher temperatures or increased flooding, which increases sedimentation in candy darter streams.

Our response: We acknowledge the importance of intact riparian areas to maintaining candy darter habitat and will work with partners to maintain and restore appropriate riparian areas to provide the proper thermal properties and bank stability in candy darter habitat.

Comments From States

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' Comments received from agencies within the State of West Virginia (the State) regarding the proposal to designate critical habitat for the candy darter are addressed below.

(7) Comment: The proposed critical habitat rule also sought comments on the Service's intent to explore other recovery tools that may require additional regulations (*e.g.,* designating experimental populations under section 10(j) of the Act) or permits (*i.e.,* Safe Harbor Agreements under section 10 of the Act). The West Virginia DNR expressed concern with using our authorities under section 10(j) of the Act for recovery of the candy darter. The State concluded that establishing experimental populations (or designating additional areas of critical habitat, other than those proposed) is not in the best interest of the species. Conversely, one public commenter suggested that we should use our authorities under section 10(j) of the Act to establish experimental candy darter populations to promote State and private landowner collaboration in conserving the species.

Our response: As discussed above, during the recovery planning process for the candy darter, we will work collaboratively with our partners and stakeholders to ensure the best conservation outcome for the species. Translocation into historical habitats is consistent with the species' recovery strategy.

Upon further consideration, we conclude that designating experimental populations (under section 10(j) of the Act) is not appropriate at this time, and we are not designating any areas as critical habitat beyond those that were proposed. In the future, if we determine, in consultation with partners and stakeholders, that the reintroduction of the species to certain historically occupied streams would benefit from

the regulatory flexibility offered by section 10(j) of the Act, we will publish a proposed rule for public comment. See Summary of Changes from Proposed Rule, below, for additional information.

(8) Comment: The West Virginia Department of Environmental Protection (DEP) and a public commenter expressed concerns with designating critical habitat. Commenters indicated that we should not designate critical habitat because: (1) Hybridization (and not loss of habitat) is the primary stressor affecting the candy darter; (2) habitat protections would not reduce the likelihood of extinction; and (3) habitat protections may disproportionately benefit the variegate darter.

Our response: The designation of critical habitat is not a discretionary action. According to section 4(a)(3)(A) of the Act, the Secretary of the Interior shall, to the maximum extent prudent and determinable, concurrently with making a determination that a species is an endangered species or a threatened species, designate critical habitat for that species. We have determined that critical habitat is both prudent and determinable for the candy darter (83 FR 59232, November 21, 2018). Therefore, as required by the Act and after consideration of substantive comments on the proposed rule, we are designating, as critical habitat, those areas occupied by the species at the time of listing on which are found the physical or biological features essential for the conservation of the species and which may require special management considerations or protection.

As we discussed in the SSA report (Service 2018, entire) and the proposed rule (83 FR 59232, November 21, 2018), there are multiple stressors in addition to the introduction of the variegate darter that are affecting the candy darter. Management of these other stressors will be important to the conservation of the species. In addition, while eliminating variegate darters from candy darter watersheds is an important goal for the conservation of the species, we are not aware of feasible methods for achieving this goal. We look forward to working with our conservation partners to research potential methods for reducing the threat of variegate darter hybridization. Though the candy darter and variegate darter share many of the same habitat requirements, such as unembedded gravel substrate, we have no evidence to suggest that the maintenance of high-quality habitat for the candy darter disproportionately benefits the variegate darter. On the contrary, it is conceivable that variegate darters are more tolerant of marginal habitat conditions and that high-quality streams within the candy darter's historical range might provide the candy darter a competitive advantage over the introduced variegate darter.

(9) Comment: The West Virginia DNR noted that candy darters may also be present in several perennial tributaries outside of the streams proposed for designation as critical habitat, but that these tributaries have not been surveyed. The State did not recommend including these tributaries as critical habitat at this time, but did recommend that these streams should be considered when reviewing projects that may affect the species.

Our response: We acknowledge that the candy darter may be present in additional streams or tributaries that have not been surveyed, and will work with the West Virginia DNR and Virginia Department of Game and Inland Fisheries to develop a list of these streams so that they can be considered during project reviews. The candy darter will be protected as an endangered species wherever it is found under the prohibitions described in section 9 of the Act.

(10) Comment: The West Virginia DEP pointed out that the rule does not define the ratio or density of nonnative species that would be consistent with the conservation of the candy darter.

Our response: As discussed in the candy darter SSA report, the scientific evidence is clear that nonnative species can have a detrimental effect on native species such as the candy darter. However, the data are not currently available to explicitly define a ratio or density of nonnatives that is protective of the candy darter. Research into establishing such conservation metrics and recovery goals for the candy darter will be addressed during the recovery planning and implementation process.

(11) Comment: The West Virginia DNR informed us that they have taken steps to formulate regulations designed to curtail, mitigate, or both, the practice of moving baitfish in regions that still contain candy darter populations and in areas in which they hope to reestablish candy darter populations.

Our response: Limiting the movement of baitfish is a key component to reduce the threat of additional variegate darter introductions, and we applaud the State's efforts in this regard.

(12) Comment: The West Virginia DNR suggested that we may have underestimated the threat of acid precipitation in the Upper Gauley.

Our response: Stream acidification in some candy darter watersheds is a serious concern and we appreciate the efforts of the State and other partners in addressing this threat. We will address this topic in future recovery planning.

Public Comments

(13) Comment: Two public commenters expressed concerns regarding the effect of a critical habitat designation on the coal mining industry. There was a particular emphasis of concern around a statement in the incremental effects memorandum (IEM) prepared by us for the economic analysis of the critical habitat designation (IEM 2018). The statement reads: ''Specific recommendations for coal mining in candy darter watersheds (augmenting the general management recommendations) will include not using valley fills. Strategic placement and frequent maintenance of all construction and operational features (*e.g.,* roads, slurry ponds, and other features that lead to sedimentation) will also be recommended.'' The commenters stated that this provision would result in a ban on coal mining.

Our response: It is important to note the context of this statement within the IEM, as it describes ''protections or efforts relevant to the known threats to the species that would provide some level of conservation for the candy darter absent the proposed critical habitat designation.'' The suggestion of avoiding valley fills as a conservation measure for candy darters specifically refers to potential actions that are *not* a result of critical habitat designation. Therefore, the IEM does not include the effects of these actions in its analysis, as they would occur regardless of the presence or absence of designated critical habitat.

We do not propose (nor do we have the authority) to ban coal mining. Federal agencies are required to consult with the Service to ensure that any action they carry out, fund, or authorize will not jeopardize the species or destroy or adversely modify designated critical habitat. The requirement to ensure any action does not jeopardize the species applies whether or not the action area is designated as critical habitat. Avoiding the use of valley fills in coal mining in candy darter watersheds, as referenced by the IEM, is an example of a conservation measure the Service might recommend during section 7 consultation, whether or not the area is designated as critical habitat.

The Service's 1996 Biological Opinion (BO) issued to the Office of Surface Mining and Reclamation and Enforcement (OSMRE) addresses coal mining practices regulated under the Surface Mining Control and Reclamation Act. The terms and conditions of that BO require the

Service to work with the appropriate State regulatory authority to develop species-specific protective measures (SSPMs) to avoid and minimize the impacts to listed species. Implementation of SSPMs and development of the required protection and enhancement plan do not make any single conservation measure mandatory (*e.g.,* banning the use of valley fills). Rather, during the consultation process for each project, the Service works with OSMRE and the State regulatory agency to develop specific conservation measures to satisfy the requirement of the BO to avoid and minimize impacts to the candy darter while allowing coal mining to proceed.

(14) Comment: Two public commenters provided comments describing the beneficial impacts of forestry best management practices (BMPs) on water quality and encouraged us to use ''consistent language, that is supported by science when discussing the value of forestry BMPs.''

Our response: We have always relied upon the use of the best scientific and commercial data available in decisionmaking processes, and we will continue to do so with regard to discussions of BMPs. The implementation of BMPs for forestry can reduce sedimentation when consistently and diligently applied, and that these BMPs are important for preserving the integrity of aquatic habitats and the species that occupy them. However, the assertion that current mechanisms are protective of the species does not relieve the Service of its statutory obligation to designate critical habitat. In *Ctr. for Biological Diversity* v. *Norton,* 240 F. Supp. 2d 1090 (D. Ariz. 2003), the court held that the Act does not direct us to designate critical habitat only in those areas where ''additional'' special management considerations or protection is needed. If any area provides the physical or biological features essential to the conservation of the species, even if that area is already well managed or protected, that area still qualifies as critical habitat under the statutory definition if special management is needed.

(15) Comment: Two public commenters encouraged us to work with the State and private landowners to establish forestry BMPs on property that is adjacent to the critical habitat designation.

Our response: We recognize and appreciate the importance of working with landowners and project proponents to protect candy darter habitats, and to avoid, minimize, and mitigate any adverse effects that may occur. We will continue to use our existing authorities to address these issues as appropriate.

(16) Comment: Two public commenters noted that candy darters occupy habitats in watersheds with active coal mining. They stated that this situation suggests that candy darters can ''thrive'' in these areas.

Our response: While candy darter populations may persist in some watersheds where mining or other land disturbances are or have been present, the extent to which these populations are stable and/or thriving remains to be determined. The proposed critical habitat rule does not specify that any particular land use is incompatible with the persistence of candy darter populations. As mentioned in previous responses to comments raising concerns about the impacts to the coal mining industry, we plan to work cooperatively with the relevant State and Federal regulatory agencies to develop conservation measures allowing the continuation of coal mining in a manner that avoids and minimizes impacts to the candy darter and its habitat.

(17) Comment: One public commenter requested that we reinitiate section 7 consultation and issue a biological opinion for two natural gas Executive Order 13211 construction projects.

Our response: We are aware of these two pipeline projects and are in discussions with the Federal Energy Regulatory Commission regarding section 7 consultation needs for the candy darter.

(18) Comment: One public commenter asked us to clarify the terms ''stream mile'' and ''protection of riparian buffers'' and to confirm that private forest lands are not included in the critical habitat designation. Similarly, another commenter suggested that we should exclude State and private forest lands from a final critical habitat designation.

Our response: We determined the ''stream mile'' to be the estimated length of the occupied stream segment by tracing the approximate centerline of the stream channel from the appropriate upstream defining characteristic to the appropriate downstream defining characteristic using the USA Topo Environmental Systems Research Institute (ESRI) basemap and/or U.S. Geological Survey topographic map. See the ''Criteria Used to Identify Critical Habitat'' section in the proposed critical habitat rule (83 FR 59232, November 21, 2018) for further details. Within these stream segments, critical habitat consists of the stream channel up to the ordinary high water line. As defined at 33 CFR 329.11, the ''ordinary high water mark'' on nontidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of the soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

Therefore, adjacent upland or terrestrial areas that are not below the ordinary high water line are not included in designated critical habitat. However, we would anticipate conducting section 7 consultations with Federal agencies for projects on Federal lands or for projects with a Federal nexus if a project had indirect impacts to the candy darter's critical habitat or on the species itself. In general, activities in riparian areas should be conducted in such a manner as to protect adjacent streams from excessive sedimentation, high water temperatures, and other water quality perturbations that would be detrimental to the candy darter. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Summary of Changes From Proposed Rule

Changes from the proposed to the final critical habitat designation were minor in nature. Based on substantive comments received during the public comment period that provided new candy darter survey data and habitat observations, we corrected some stream termini (and resultant segment lengths). Additionally, one stream with candy darter occurrence data was inadvertently omitted from the proposed rule; this segment is now included as critical habitat. The changes listed below resulted in a net reduction of approximately 2.8 stream kilometers (1.7 stream miles) of critical habitat from what was originally proposed. All changes are reflected on the maps, which outline the areas designated as critical habitat and are located at the end of this document.

TABLE 1—CHANGES TO CRITICAL HABITAT UNITS BASED ON INFORMATION RECEIVED DURING THE PUBLIC COMMENT PERIOD

Unit	Subunit	Net change	
		Stream kilometers	Stream miles
1—Greenbrier	1a	−5.0	−3.1
1—Greenbrier	1b	+3.9	+2.4
2—Middle New	2b	−3.1	−1.9
2—Middle New	2c	+1.4	+0.9
Total		−2.8	−1.7

As mentioned above in Summary of Comments and Recommendations, the Service has reconsidered its intent to establish nonessential experimental populations using our authority under section 10(j) of the Act at this time. Based on comments from a State partner, we conclude that allowing the States to reestablish and translocate the candy darter into historically occupied areas using their own authorities will be a more effective recovery strategy for the candy darter. However, if we receive further substantive information at a later date and determine that the use of a section 10(j) rule will aid in the recovery of the candy darter, we will publish a proposed rule for public comment. Reestablishing candy darter populations into historically occupied areas continues to be an important part of our recovery strategy for the candy darter. We will coordinate with our partners to implement the most effective recovery strategy. In both the State of Virginia and the State of West Virginia, the water and the streambed fall under the authority of the State. As a result, the State resource agencies hold the State regulatory authority over the waters (Virginia Code § 62.1, West Virginia Code § 22–26).

Critical Habitat

Background

Please refer to our November 21, 2018, proposed critical habitat rule (83 FR 59232) for a summary of species information available to the Service at the time that the proposed rule was published. Based on information we received during the proposed rule's public comment period, we updated several critical habitat stream termini to more accurately capture areas that meet the definition of critical habitat and remove areas that do not. We also added one inadvertently omitted occupied stream as critical habitat in the Greenbrier River watershed. The result of these changes in this final rule is a net reduction of approximately 1.7 stream miles (2.8 stream kilometers) (outlined above). These changes are incorporated into the critical habitat maps at the end of this rule.

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as, ''An area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).''

Conservation, as defined under section 3 of the Act, means ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.''

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features: (1) Which are essential to the conservation of the species, and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the specific features that support the life-history needs of the species, including but not limited to,

water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside of the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species, the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the Act's section 9 prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to the recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

On August 27, 2019, we published a final rule in the **Federal Register** (84 FR 45020) to amend our regulations concerning the procedures and criteria we use to designate and revise critical habitat. That rule became effective on September 26, 2019, but, as stated in that rule, the amendments it sets forth apply to ''rules for which a proposed rule was published after September 26, 2019.'' We published our proposed critical habitat designation for the candy darter on November 21, 2018 (83 FR 59232); therefore, the amendments set forth in the August 27, 2019, final rule at 84 FR 45020 do not apply to this final designation of critical habitat for the candy darter.

Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. For example, physical features might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic needed to support the life history of the species. In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of candy darter from studies of this species' habitat, ecology, and life history as described below. Additional information can be found in the proposed critical habitat designation and final listing rule published in the **Federal Register** on November 21, 2018 (83 FR 59232 and 83 FR 58747, respectively), and the recovery outline for the candy darter (Service 2019, entire), which can be found at: *https://ecos.fws.gov/docs/recovery_plan/2018%20CDRecoveryOutline.pdf.* We have determined that the following physical or biological features are essential to the conservation of the candy darter:

(1) Ratios or densities of nonnative species that allow for maintaining populations of candy darters;

(2) A blend of unembedded gravel and cobble that allows for normal breeding, feeding, and sheltering behavior;

(3) Adequate water quality characterized by seasonally moderated temperatures and physical and chemical parameters (*e.g.,* pH, dissolved oxygen levels, turbidity, etc.) that support normal behavior, growth, and viability of all life stages of the candy darter;

(4) An abundant, diverse benthic macroinvertebrate community (*e.g.,* mayfly nymphs, midge larvae, caddisfly larvae) that allows for normal feeding behavior; and

(5) Sufficient water quantity and velocities that support normal behavior, growth, and viability of all life stages of the candy darter.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection. The overall habitat characteristics that are important for the candy darter include sufficiently stabilized forest streambanks throughout the watersheds such that water quality allows for normal feeding, breeding, and sheltering in an area with sufficiently low numbers of nonnative species (Service 2018, pp. 15–17, 22–25, 32–34). The features essential to the conservation of the candy darter may require special management considerations or protections to reduce the following threats: (1) Hybridization with the nonnative variegate darter; (2) general increase in water temperature, primarily attributed to land use changes; (3) changes in water chemistry, including, but not limited to, changes in pH levels or concentrations of certain contaminants (such as, but not limited to, coliform bacteria); (4) habitat fragmentation primarily due to construction of barriers and impoundments; (5) excessive sedimentation and stream bottom embeddedness (the degree to which gravel, cobble, rocks, and boulders are surrounded by, or covered with, fine sediment particles); and (6) competition for habitat and other instream resources and predation from nonnative fishes.

Management activities that could ameliorate these threats include, but are not limited to: (1) Use of BMPs designed to reduce sedimentation, erosion, and bankside destruction; (2) protection of riparian corridors and retention of sufficient canopy cover along streambanks; (3) reduction of other watershed disturbances that release sediments, pollutants, or nutrients into the water; (4) public outreach requesting the public's assistance with stopping the movement of nonnative aquatic species; (5) increased enforcement and/or outreach regarding existing regulations prohibiting the movement of bait fish; (6) survey and monitoring to further characterize the extent and spread of hybridization with variegate darters; (7) research to determine whether some environmental factors or set of factors might allow candy darters to persist in particular areas despite variegate darter introductions; (8) research characterizing habitat conditions in historically extirpated candy darter sites to facilitate successful reintroduction efforts; (9) research and development of tools and techniques that can be used to address the competitive behavior that allows for variegate darters to dominate candy darters, which leads to hybridization; and (10) reintroductions of candy darters to historically extirpated areas and/or population augmentation of candy darters in sufficient numbers to outcompete variegate darters.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not designating any areas outside the geographical area occupied by the species at the time of listing, because we did not find any areas that were essential for the conservation of the species. We are designating critical habitat in areas within the geographical area occupied by the species at the time of listing in 2018. Refer to the candy darter proposed critical habitat designation for a full description of criteria used to identify critical habitat (83 FR 59232, November 21, 2018).

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features that are suitable for the candy darter. The scale of the maps that the Service prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation requirements with respect to critical habitat and the requirement of no destruction or adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R5–ES–2018–0050, on our internet site *https://www.fws.gov/northeast/candydarter/,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

Final Critical Habitat Designation

We are designating five units as critical habitat for the candy darter. The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat. Those five units are: (1) Greenbrier, (2) Middle New, (3) Lower Gauley, (4) Upper New, and (5) Upper Gauley.

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Table 2. Designated critical habitat units for candy darter.

Critical Habitat Unit	Land Ownership	Unit Size (Stream Length)	
		Miles	Kilometers
1. Greenbrier	Federal	78	125
	State	6	10
	Private	70	113
	Unit Total	154	248
2. Middle New	Federal	12	19
	State	0	0
	Private	14	22
	Unit Total	25	41
3. Lower Gauley	Federal	2	3
	State	0	0
	Private	0	0
	Unit Total	2	3
4. Upper New	Federal	0	0
	State	0	0
	Private	5	8
	Unit Total	5	8
5. Upper Gauley	Federal	90	145
	State	0	0
	Private	92	148
	Unit Total	182	293
	Grand Total	368	593

Note: Stream lengths may not sum due to rounding.

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We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the candy darter, below. In all instances, the units are occupied. The State of Virginia (VA) or West Virginia (WV), as applicable, owns the stream water and stream bottoms, and the lands described below are those adjacent to the designated critical habitat stream areas.

Unit 1: Greenbrier

The Greenbrier Unit consists of six subunits in Pocahontas County, WV. The occupied streams are adjacent to primarily Federal land, with some private land and one State-owned parcel. The Greenbrier Unit has been surveyed for the candy darter as recently as 2014 (Service 2018, p. 48). The unit currently supports all breeding, feeding, and sheltering needs for the species. See details below.

Unit 1a: East Fork of the Greenbrier River, Pocahontas County, WV

Unit 1a consists of approximately 29.7 stream kilometers (skm) (18.5 stream miles (smi)) of the East Fork of the Greenbrier River from the confluence of an unnamed tributary (located 1.8 skm (1.1 smi) upstream of the Bennett Run confluence), downstream to the confluence of the East Fork and West Fork of the Greenbrier River at Durbin, WV; approximately 6.8 skm (4.2 smi) of the Little River from the U.S. Highway 250 crossing, downstream to the confluence of the Little River and the East Fork of the Greenbrier River; and approximately 1.9 skm (1.2 smi) of Buffalo Fork from the Buffalo Lake dam, downstream to the confluence of Buffalo Fork and the Little River. The land adjacent to this unit is mostly forested interspersed with small communities, low-density residences, and agricultural fields along the lower portion of the East Fork of the Greenbrier River. Approximately 21.2 skm (13.2 smi) of Unit 1a is within the Monongahela National Forest with the remainder located almost entirely adjacent to private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like. Candy darters occur at multiple sites in this unit (Service 2018, p. 28). Unit 1a contributes to the redundancy of the Greenbrier metapopulation.

Unit 1b: West Fork of the Greenbrier River, Pocahontas County, WV

Unit 1b consists of approximately 29.9 skm (18.6 smi) of the West Fork of the Greenbrier River from the confluence with Snorting Lick Run, downstream to the confluence of the East Fork and West Fork of the Greenbrier River at Durbin, WV; approximately 13.3 skm (8.3 smi) of the Little River from the confluence with Hansford Run, downstream to the confluence of the Little River and the West Fork of the Greenbrier River; and approximately 4.8 skm (3.0 smi) of Mountain Lick Creek from the confluence with an unnamed tributary (located 1.5 skm (0.9 smi) downstream of the Upper Mountain Lick Forest Service Road crossing), downstream to the confluence of Mountain Lick Creek and the West Fork of the Greenbrier River. The land adjacent to this unit is almost entirely forested interspersed with a few residences and agricultural fields along the lower portion of the West Fork of the Greenbrier River near

the town of Durbin, WV. Approximately 47.1 skm (29.3 smi) of Unit 1b is within the Monongahela National Forest with the remainder adjacent to almost entirely private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like. Surveys found candy darters at multiple sites in this unit (Service 2018, p. 28). Unit 1b contributes to the redundancy of the Greenbrier metapopulation.

Unit 1c: Upper Greenbrier River, Pocahontas County, WV

Unit 1c consists of approximately 69.3 skm (43.1 smi) of the Greenbrier River from the confluence of the East Fork and West Fork of the Greenbrier River at Durbin, WV, downstream to the confluence of Knapp Creek at Marlinton, WV. The land adjacent to this unit is mostly forested; however, several small communities with residences and light commercial development, along with scattered rural residences and agricultural fields, occur at various locations. Approximately 47.5 skm (29.5 smi) of Unit 1c is within the Monongahela National Forest and the Seneca State Forest, with the remainder adjacent to almost entirely private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like. Survey data indicate candy darters are present in the upper and lower portions of this unit (Service 2018, p. 28). While survey data for the intervening section are lacking, candy darters may occur where suitable habitat is present. Unit 1c contributes to the redundancy of the Greenbrier metapopulation and provides connectivity between the other Greenbrier watershed populations.

Unit 1d: Deer Creek, Pocahontas County, WV

Unit 1d consists of approximately 21.2 skm (13.2 smi) of Deer Creek from the confluence of Deer Creek and Saulsbury Run, downstream to the confluence with the Greenbrier River; and approximately 16.3 skm (10.1 smi) of North Fork from a point approximately 1.6 km (1.0 mi) upstream of the Elleber Run confluence, downstream to the confluence of North Fork and Deer Creek. The lower half of the land adjacent to this unit is mostly forested, while the upper portion contains low-density residences and agricultural fields. Approximately 10.0 skm (6.2 smi) of Unit 1d is within the Monongahela National Forest, with the remainder adjacent to almost entirely private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like. Surveys collected candy darters at two locations in this unit (Service 2018, p. 28). Unit 1d contributes to the redundancy of the Greenbrier metapopulation.

Unit 1e: Sitlington Creek, Pocahontas County, WV

Unit 1e consists of approximately 10.1 skm (6.3 smi) of Sitlington Creek from the confluence of Galford Run and Thorny Branch, downstream to the confluence with the Greenbrier River. Some of the riparian area of Unit 1e is forested; however, the majority of the land adjacent to this unit is agricultural fields and widely scattered residences. Approximately 1.2 skm (0.7 smi) of Unit 1e is within the Monongahela National Forest, with the remainder adjacent to almost entirely private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like. Candy darters have been documented at several locations in this unit (Service 2018, p. 28). Unit 1e contributes to the redundancy of the Greenbrier metapopulation.

Unit 1f: Knapp Creek, Pocahontas County, WV

Unit 1f consists of approximately 43.9 skm (27.3 smi) of Knapp Creek from a point approximately 0.16 skm (0.1 smi) west of the WV Route 84 and Public Road (PR) 55 intersection, downstream to the confluence with the Greenbrier River at Marlinton, WV. The land adjacent to this unit is largely forested; however, low-density residential and agricultural fields occur in much of the upstream portions. The land surrounding the lowest section of Unit 1f is dominated by residential and commercial development. Approximately 7.2 skm (4.5 smi) of Unit 1f is within the Monongahela National Forest, with the remainder adjacent to almost entirely private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like. Surveys documented candy darters at several locations in this unit (Service 2018, p. 28). Unit 1f contributes to the redundancy of the Greenbrier metapopulation.

Unit 2: Middle New

The Middle New Unit comprises three stream subunits in Bland and Giles Counties, VA. The occupied streams are adjacent to a mix of Federal and private land. Candy darter have been surveyed in the Middle New Unit as recently as 2016 (Service 2018, p. 48). The unit currently supports all breeding, feeding, and sheltering needs for the species. See details below.

Unit 2a: Dismal Creek, Bland and Giles Counties, VA

Unit 2a consists of approximately 4.2 skm (2.6 smi) of Dismal Creek from the confluence with Standrock Branch, downstream to the confluence of Dismal Creek and Kimberling Creek. The land adjacent to this unit is almost entirely forested, with some scattered residences and small agricultural fields. Approximately 3.2 skm (2.0 smi) of Unit 2a is within the George Washington and Jefferson National Forest, with the remainder adjacent to almost entirely private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like. Surveys documented a small candy darter population, which contributes to the representation and redundancy of the species (Service 2018, p. 28).

Unit 2b: Stony Creek, Giles County, VA

Unit 2b consists of approximately 31.1 skm (19.3 smi) of Stony Creek from the confluence with White Rock Branch, downstream to the confluence with the New River. The land adjacent to this unit is almost entirely forested, with some scattered residences, a large underground lime mine, a processing plant, and a railroad spur line along the downstream portion. Approximately 16.1 skm (10.0 smi) of Unit 2b is within the George Washington and Jefferson National Forest, with the remainder adjacent to almost entirely private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like. Surveys documented candy darters at multiple locations within this unit. Unit 2b is the most robust population in Virginia and contributes to the representation and redundancy of the species (Service 2018, p. 28).

Unit 2c: Laurel Creek, Bland County, VA

Unit 2c consists of approximately 5.1 skm (3.2 smi) of Laurel Creek from a point approximately 0.8 skm (0.5 smi) upstream of the unnamed pond, downstream to the confluence of Laurel Creek and Wolf Creek and approximately 1.4 skm (0.8 smi) of Wolf Creek from the Laurel Creek confluence downstream to the stream riffle adjacent to the intersection of Wolf Creek Highway and Alder Lane. The unit passes through a forested gap in a ridgeline; however, the riparian zone is dominated by Interstate Highway 77, U.S. Highway 52, and residential and commercial development. Unit 2c is adjacent to almost entirely private land,

except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like. Surveys found candy darters at several locations within this unit (Service 2018, p. 28). Unit 2c contributes to the representation and redundancy of the species.

Unit 3: Lower Gauley, ''Lower'' Gauley River, Nicholas County, WV

Unit 3 consists of approximately 2.9 skm (1.8 smi) of the Gauley River from the base of the Summersville Dam, downstream to the confluence of Collison Creek. The land adjacent to this unit is entirely forested, with the exception of parking areas and infrastructure at the base of the Summersville Dam. The entirety of Unit 3 is within the National Park Service's Gauley River National Recreation Area and the U.S. Army Corps of Engineer's (Corps') Summersville Recreation Area. Candy darters are abundant in the tailwaters of the dam. Unit 3 supports the only candy darter population remaining in the Lower Gauley watershed and contributes to the representation and redundancy of the species. Candy darters were documented in surveys of Unit 3 as recently as 2014 (Service 2018, pp. 28 & 48). The unit currently supports all breeding, feeding, and sheltering needs for the species.

Unit 4: Upper New, Cripple Creek, Wythe County, VA

Unit 4 consists of approximately 7.9 skm (4.9 smi) of Cripple Creek from a point approximately 3.2 skm (2.0 smi) upstream of the State Road 94 bridge, downstream to the confluence of Cripple Creek and the New River. The land adjacent to this unit is primarily low-density residences and agricultural fields, although some small segments pass through wooded parcels. The stream in Unit 4 is adjacent to almost entirely private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like. Surveys found candy darters at several locations within this unit as recently as 2016 (Service 2018, pp. 28 & 48). This is the only known candy darter population in the Upper New River watershed, and this unit contributes to the representation and redundancy of the species. The unit currently supports all breeding, feeding, and sheltering needs for the species.

Unit 5: Upper Gauley

The Upper Gauley Unit consists of six stream subunits in Nicholas, Greenbrier, Pocahontas, and Webster Counties, WV. The occupied streams are adjacent to a mix of Federal and private land. Candy darter have been surveyed in the Upper Gauley Unit as recently as 2014 (Service 2018, p. 48). The unit currently supports all breeding, feeding, and sheltering needs for the species. See details below.

Unit 5a: Gauley Headwaters, Webster County, WV

Unit 5a consists of approximately 37.3 skm (23.2 smi) of the Gauley River from the North and South Forks of the Gauley River, downstream to the confluence of the Gauley River and the Williams River at Donaldson, WV; and 2.9 skm (1.8 smi) of Straight Creek from its confluence with the Gauley River to a point approximately 2.9 skm (1.8 smi) upstream of the confluence. The land adjacent to this unit is mostly forested; however, aerial imagery (ESRI 2015; ESRI 2016; ESRI 2017) shows forest clearings with varying degrees of regrowth, indicating ongoing timber harvests in some tributary stream systems. Other human development in the watershed consists primarily of scattered residences and roads, mostly in the valley adjacent to the Gauley River. Approximately 9.0 skm (5.6 smi) of Unit 5a is within the Monongahela National Forest. The remainder of the unit is adjacent to almost entirely private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like. Surveys of Unit 5a captured candy darters at multiple locations (Service 2018, p. 28). The unit contributes to the redundancy of the Upper Gauley metapopulation.

Unit 5b: Upper Gauley River, Nicholas and Webster Counties, WV

Unit 5b consists of approximately 43.8 skm (27.2 smi) of the Gauley River from the confluence of the Gauley and Williams Rivers at Donaldson, WV, downstream to a point approximately 1.6 skm (1.0 smi) upstream of the Big Beaver Creek confluence. The land adjacent to this unit is mostly forested; however, aerial imagery (ESRI 2015; ESRI 2016; ESRI 2017) shows forest clearings with varying degrees of regrowth, indicating ongoing timber harvests in some areas. Other human development consists primarily of low-density residential areas and small communities with some commercial facilities. Small agricultural fields are associated with some of the scattered residences. Approximately 14.6 skm (9.2 smi) of Unit 5b is within the Monongahela National Forest and/or adjacent to land owned by the Corps. The streams in the remainder of the unit are adjacent to almost entirely private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like. Surveys of Unit 5b captured candy darters at several locations (Service 2018, p. 28). The unit provides connectivity between other candy darter streams in the Upper Gauley watershed and contributes to the redundancy of the Upper Gauley metapopulation.

Unit 5c: Panther Creek, Nicholas County, WV

Unit 5c consists of approximately 16.3 skm (10.1 smi) of Panther Creek from a point approximately 1.1 skm (0.7 smi) upstream of the Grassy Creek Road crossing, downstream to the confluence with the Gauley River. The unit is mostly forested; however, aerial imagery (ESRI 2015; ESRI 2016; ESRI 2017) shows forest clearings with varying degrees of regrowth, indicating ongoing timber harvests in much of the upland areas. Other human development consists of the occasional residence and small agricultural field in the creek valley, and the Richwood Municipal Airport located on an adjacent ridge. The streams in Unit 5c are adjacent to almost entirely private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like. While survey data are sparse for this unit, candy darters occur within Panther Creek, and the stream maintains suitable habitat for the species; thus, this unit contributes to the redundancy of the Upper Gauley metapopulation (Service 2018, p. 28).

Unit 5d: Williams River, Pocahontas and Webster Counties, WV

Unit 5d consists of approximately 52.4 skm (32.6 smi) of the Williams River from the confluence with Beaverdam Run, downstream to the confluence of the Williams River and the Gauley River at Donaldson, WV; and 5.1 skm (3.2 smi) of Tea Creek from a point on Lick Creek approximately 2.7 skm (1.7 smi) upstream of the Lick Creek confluence, downstream to the Tea Creek confluence with the Williams River. The land adjacent to this unit is almost entirely forested with just a few residences and small agricultural fields at the lower portion of the river. The streams in Unit 5d are entirely within the Monongahela National Forest. Survey data indicate candy darters are present at the upper and lower portions of this unit. While data are sparse for the majority of the intervening stretch, we assume, based on the available evidence, that the habitat is suitable for the species (Service 2018, p. 28). Unit 5d contributes to the redundancy of the Upper Gauley metapopulation.

Unit 5e: Cranberry River, Nicholas and Webster Counties, WV

Unit 5e consists of approximately 39.3 skm (24.4 smi) of the Cranberry River from the confluence of the North and South Forks of the Cranberry River, downstream to the confluence of the Cranberry River and the Gauley River. The land adjacent to this unit is almost entirely forested, and the stream is entirely within the Monongahela National Forest. Survey data indicate candy darters are present at the upper and lower portions of this unit. While survey data are sparse for the intervening stretch, we assume, based on the available evidence, that the habitat is suitable for the species (Service 2018, p. 28). Unit 5e contributes to the redundancy of the Upper Gauley metapopulation.

Unit 5f: Cherry River, Greenbrier and Nicholas Counties, WV

Unit 5f consists of approximately 16.7 skm (10.4 smi) of Cherry River from the confluence of the North and South Forks of the Cherry River, downstream to the confluence of the Cherry River and the Gauley River; approximately 28.0 skm (17.4 smi) of the North Fork Cherry River from the Pocahontas Trail crossing, downstream to the confluence of the North and South Forks of the Cherry River; approximately 26.2 skm (16.3 smi) of the South Fork Cherry River from a point approximately 0.5 skm (0.3 smi) south of County Road 29/4 in VA, downstream to the confluence of the North and South Forks of the Cherry River; and approximately 24.9 skm (15.5 smi) of Laurel Creek from a point approximately 0.3 skm (0.2 smi) west of Cold Knob Road, downstream to the confluence of Laurel Creek and the Cherry River. The land adjacent to this unit is mostly forested with scattered residences along the lower portion of the Cherry River. The town of Richwood, WV, with residential and commercial development and an industrial sawmill, is at the confluence of the North and South Forks of the Cherry River. The North and South Forks of the Cherry River are almost entirely forested; however, aerial imagery (ESRI 2015; ESRI 2016; ESRI 2017) shows forest clearings with varying degrees of regrowth, indicating ongoing timber harvests in several locations. There are scattered residences on Laurel Creek and some evidence of recent timber harvests; otherwise, the land adjacent to this section of Unit 1f is mostly forested. Approximately 29.1 skm (18.1 smi) of Unit 5f is within the Monongahela National Forest. The remainder is adjacent to almost entirely private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like. Survey data indicate candy darters are well distributed throughout most of this unit (Service 2018, p. 28). Unit 5f contributes to the redundancy of the Upper Gauley metapopulation.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final regulation with a revised definition of destruction or adverse modification on August 27, 2019 (84 FR 45020). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the

species. Activities that may destroy or adversely modify critical habitat are those that result in a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of the candy darter. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the candy darter. These activities include, but are not limited to:

(1) Actions that would promote or facilitate the movement of variegate darters (or other nonnative aquatic species). Such activities could include, but are not limited to, the transfer of surface water across watershed boundaries and the modification or removal of dams that are currently limiting the spread of variegate darters where they have been introduced. These activities could further decrease the abundance of the candy darter through hybridization with the nonnative variegate darter.

(2) Actions that would significantly increase water temperature or sedimentation and stream bottom embeddedness. Such activities could include, but are not limited to, land use changes that result in an increase in sedimentation, erosion, and bankside destruction or the loss of the protection of riparian corridors and leaving insufficient canopy cover along banks.

(3) Actions that would significantly alter water chemistry. Such activities could include, but are not limited to, release of chemicals, biological pollutants, or heated effluents into the surface water or connected groundwater at a point source or by dispersed release (nonpoint source). These activities could alter water conditions to levels that are beyond the tolerances of the candy darter and result in direct or cumulative adverse effects to these individuals and their life cycles.

(4) Actions that would contribute to further habitat fragmentation. Such activities include, but are not limited to, construction of barriers that impede the instream movement of the candy darter (*e.g.,* dams, culverts, or weirs). These activities can isolate populations that are more at risk of decline or extirpation as a result of genetic drift, demographic or environmental stochasticity, and catastrophic events.

(5) Actions that would contribute to nonnative competition for habitat and other instream resources and to predation. Possible actions could include, but are not limited to, release or stocking of nonnative fishes or other related actions. These activities can introduce predators or affect the growth, reproduction, and survival of the candy darter through competition for resources.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense lands within the final critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. In order to consider economic impacts, we prepared an Incremental Effects Memo (IEM) and screening analysis, which together with our narrative and interpretation of effects we consider our draft economic analysis (DEA) of the proposed critical habitat designation and related factors. The analysis, dated July 3 2018, was made available for public review from November 21, 2018, through January 22, 2019 (83 FR 59232). The DEA addressed probable economic impacts of critical habitat designation for candy darter. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for the candy darter is available in the screening analysis for the candy darter (IEc 2018), available at *http://www.regulations.gov.* We made no changes to the screening analysis from the proposed rule to the final rule.

Exclusions

Exclusions Based on Economic Impacts

After the Service fully considered the economic impacts of the critical habitat designation, the Secretary has decided not to exercise his discretion to exclude any areas from this critical habitat designation based on those economic impacts. A copy of the IEM and screening analysis with supporting documents may be obtained by contacting the West Virginia Ecological Services Field Office (see **ADDRESSES**) or by downloading from the internet at *http://www.regulations.gov.*

Exclusions Based on Impacts on National Security and Homeland Security

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. We have determined that the lands adjacent to the designation of critical habitat for candy darter are not owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security. In addition, we did not receive any requests based for exclusions based on national security impacts from any Federal agency. Consequently, the Secretary is not exercising his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, the Service considers any other relevant impacts of the critical habitat designation, in addition to economic impacts and impacts on national security. The Service considers a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are nonpermitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that there are currently no permitted conservation plans or other non-permitted conservation agreements or partnerships for candy darter, and the final designation does not include any tribal lands or tribal trust resources. However, we are aware of management plans within the candy darter's range such as the Monongahela National Forest Land and Resource Management Plan and forest plans for the George Washington and Thomas Jefferson National Forests. We anticipate no impact on tribal lands, partnerships, permitted or nonpermitted plans or agreements from this critical habitat designation. Accordingly, the Secretary is not exercising his discretion to exclude any areas from this final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

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

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

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

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

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000 (13 CFR 121.201). To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are required to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself, and therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the Agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that the final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration.

The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with candy darter conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

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

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

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this proposed rule would significantly or uniquely affect small governments because the waters being proposed for critical habitat designation are owned by the States of Virginia and West Virginia. These government entities do not fit the definition of ''small government jurisdiction.'' Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for candy darter in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for candy darter does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Virginia and West Virginia. We received comments from the West Virginia DNR and the West Virginia DEP and have addressed them in the Summary of Comments and Recommendations section of the preamble. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office

of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the candy darter. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands within the candy darter's historical or current range. Therefore, we are not designating critical habitat for the candy darter on tribal lands.

References Cited

A complete list of all references cited is available on the internet at *http://www.regulations.gov* and upon request from the West Virginia Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Service's Species Assessment Team, the Northeast Regional Office, the West Virginia Ecological Services Field Office, and the Southwestern Virginia Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11, in paragraph (h), by revising the entry for ''Darter, candy'' under ''Fishes'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
FISHES				
*	*	*	*	*
Darter, candy	*Etheostoma osburni*	Wherever found	E	83 FR 58747, 11/21/2018; 50 CFR 17.95(e).CH
*	*	*	*	*

■ 3. Amend § 17.95, in paragraph (e), by adding an entry for ''*Candy Darter (Etheostoma osburni)*'' after the entry for ''*Amber Darter (Percina antesella)*'',

to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) * * *

Candy Darter (Etheostoma Osburni)

(1) Critical habitat units are depicted for Bland, Giles, and Wythe Counties, Virginia, and Greenbrier, Nicholas, Pocahontas, and Webster Counties, West Virginia, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the candy darter consist of the following components:

(i) Ratios or densities of nonnative species that allow for maintaining populations of candy darters.

(ii) A blend of unembedded gravel and cobble that allows for normal breeding, feeding, and sheltering behavior.

(iii) Adequate water quality characterized by seasonally moderated temperatures and physical and chemical parameters (*e.g.,* pH, dissolved oxygen

levels, turbidity) that support normal behavior, growth, and viability of all life stages of the candy darter.

(iv) An abundant, diverse benthic macroinvertebrate community (*e.g.,* mayfly nymphs, midge larvae, caddisfly larvae) that allows for normal feeding behavior.

(v) Sufficient water quantity and velocities that support normal behavior, growth, and viability of all life stages of the candy darter.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on May 7, 2021.

(4) *Critical habitat map units.* The provided maps were made using the geographic projection GCS_North_American_1983 coordinate system. Four spatial layers are included as background layers. We used two political boundary layers indicating the State and county boundaries within the United States available through ArcMap Version 10.5 software by ESRI. The roads layer displays major interstates, U.S. highways, State highways, and county roads in the Census 2000/TIGER/Line dataset provided by the U.S. Census Bureau, and available through ArcMap Version 10.5 software. Lastly, the hydrologic data used to indicate river and stream location are a spatial layer of rivers, streams, and small tributaries from the National Hydrology Database (NHD) Plus Version 2 database. This database divides the United States into a number of zones, and the zones that include the area where candy darter critical habitat is indicated are the Ohio-05 hydrologic zone and the Mid Atlantic-02 hydrologic zone. The maps provided display the critical habitat in relation to State and county boundaries, major roads and highways, and connections to certain rivers and streams within the larger river network. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at *https://www.fws.gov/northeast/candydarter/,* at *http://www.regulations.gov* at Docket No. FWS–R5–ES–2018–0050, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map of candy darter critical habitat units follows:

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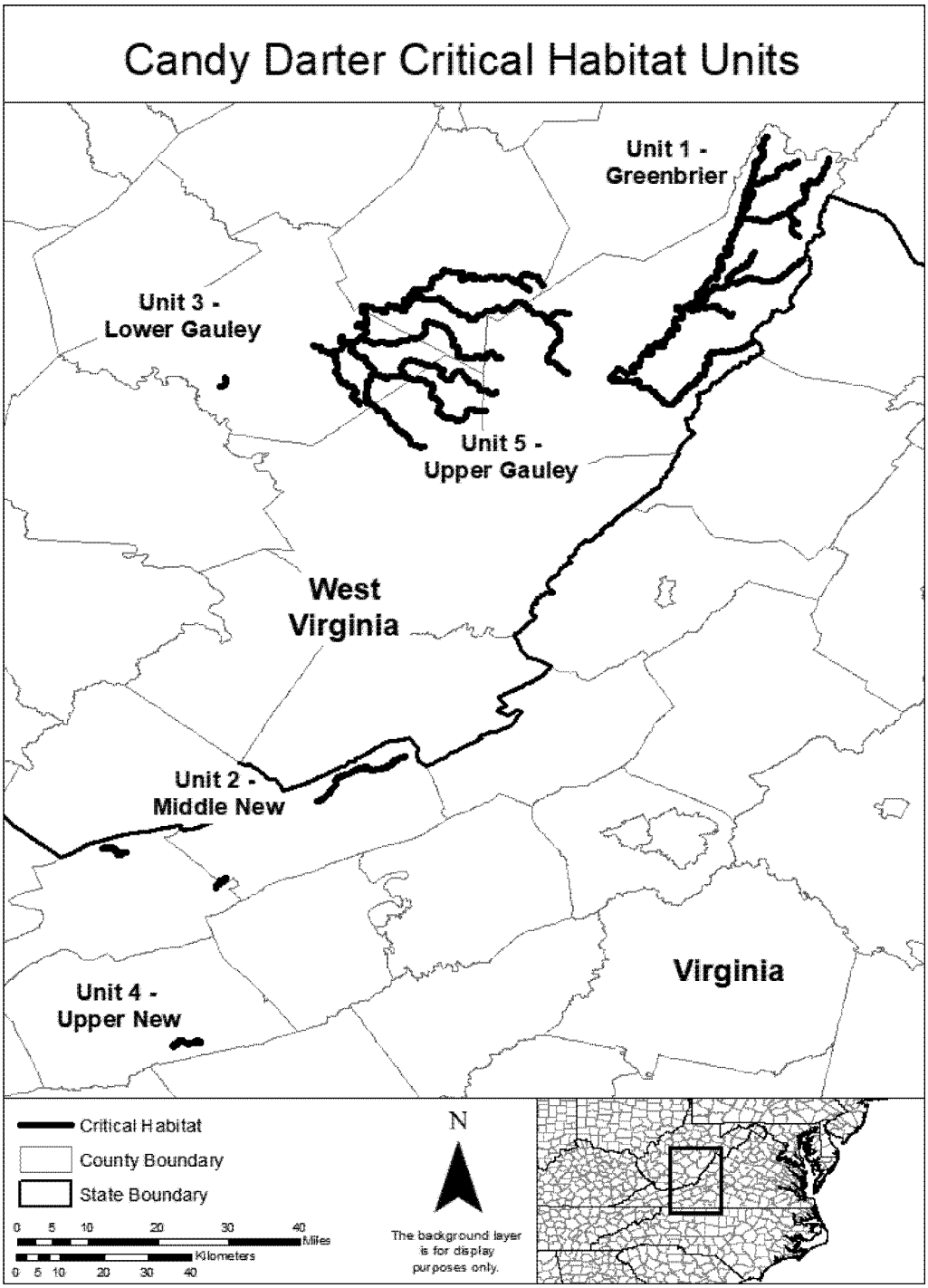
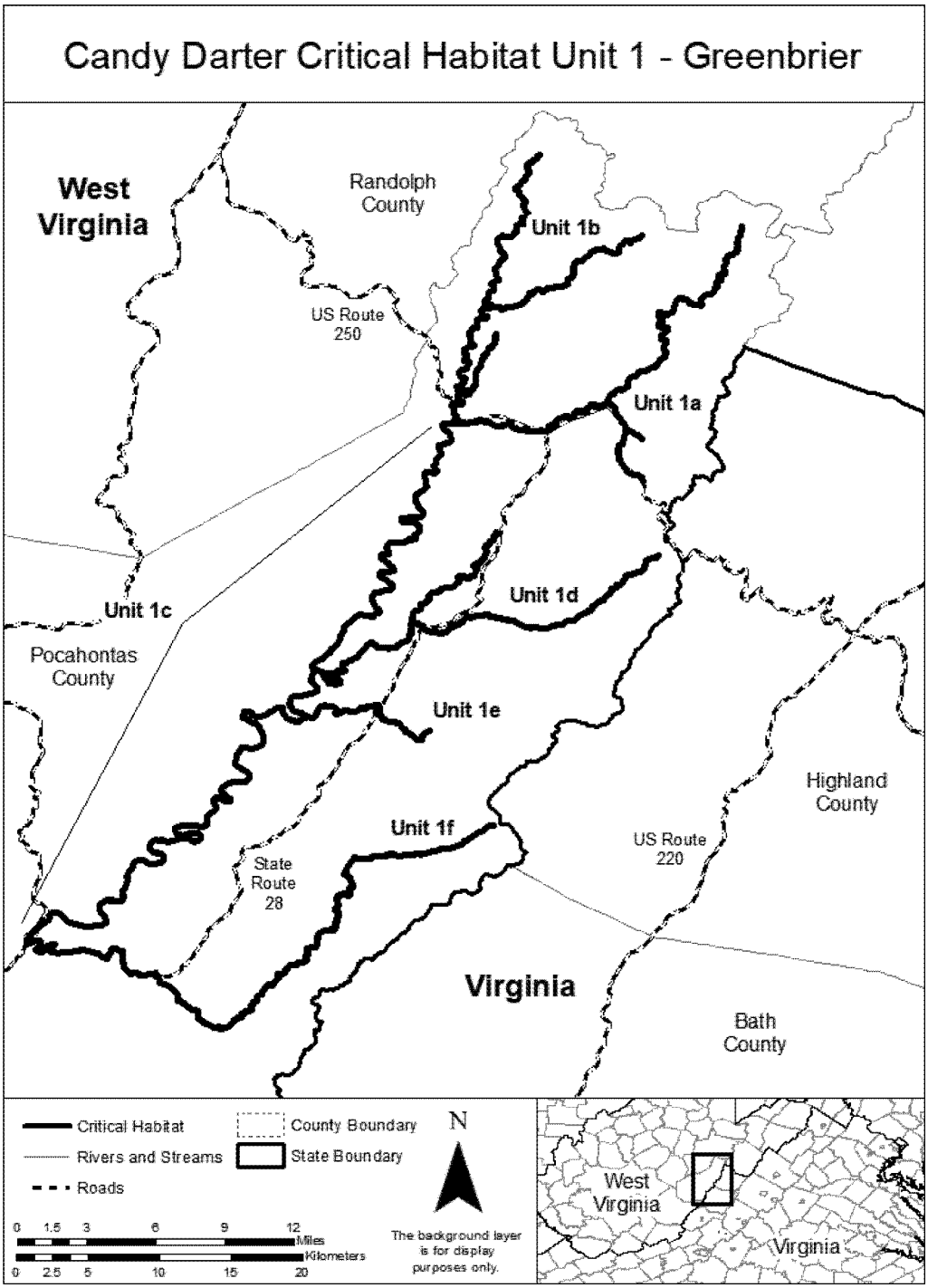


(6) Index map of Unit 1–Greenbrier follows:

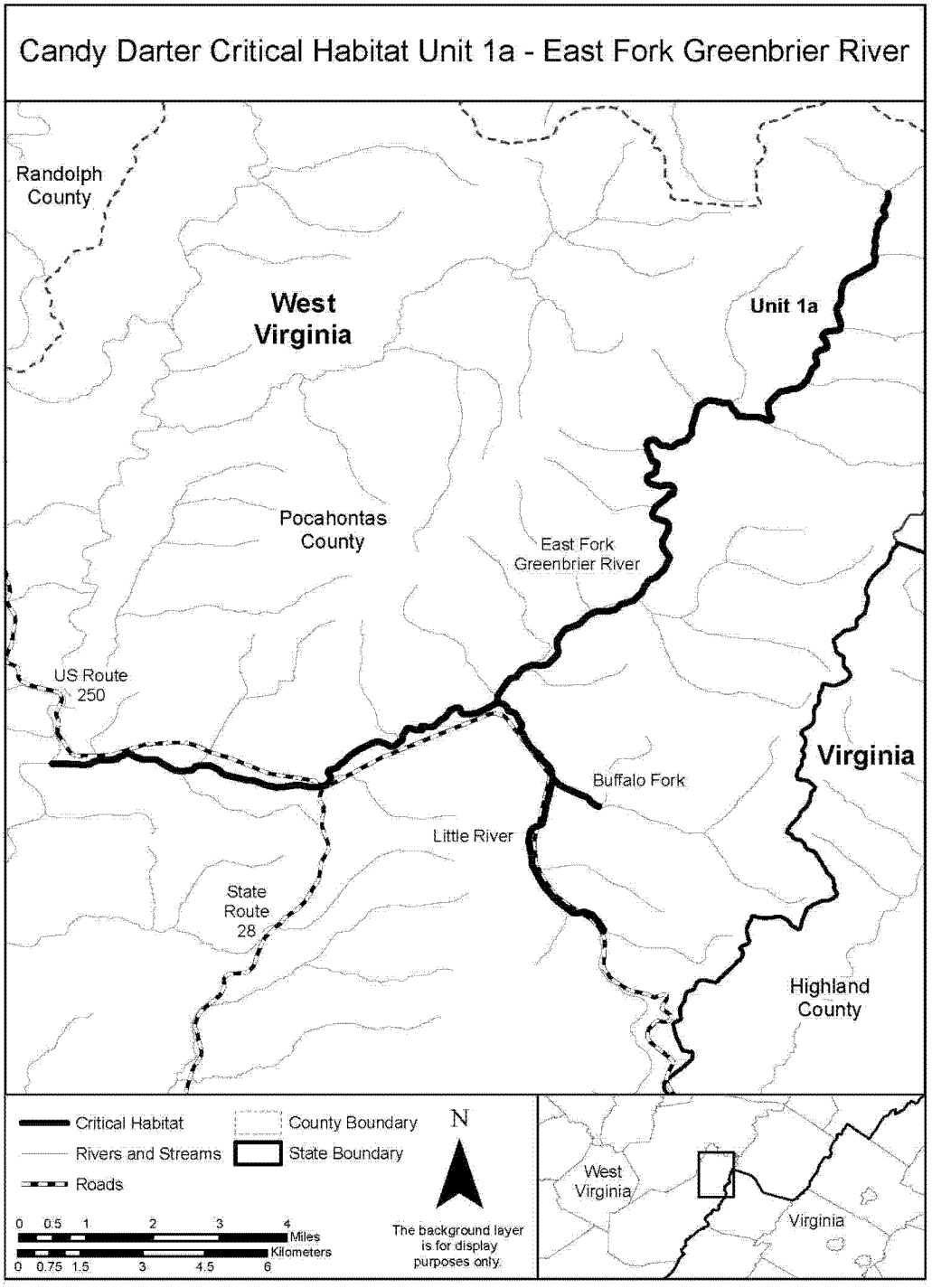


(7) *Unit 1a:* East Fork of Greenbrier River, Pocahontas County, West Virginia.

(i) *General description:* Unit 1a consists of approximately 29.7 stream kilometers (skm) (18.5 stream miles (smi)) of the East Fork of the Greenbrier River from the confluence of an unnamed tributary located 1.8 skm (1.1 smi) upstream of the Bennett Run confluence, downstream to the confluence of the East Fork and West Fork of the Greenbrier River at Durbin, West Virginia; and approximately 6.8 skm (4.2 smi) of the Little River from the U.S. Highway 250 crossing, downstream to the confluence of the Little River and the East Fork of the Greenbrier River; and approximately 1.9 skm (1.2 smi) of Buffalo Fork from the Buffalo Lake dam downstream to the confluence of Buffalo Fork and the Little River. Approximately 21.2 skm (13.2 smi) of Unit 1a is within the Monongahela National Forest with the remainder adjacent to almost entirely private land, except for a small amount that is

publicly owned in the form of bridge crossings, road easements, and the like.

(ii) Map of Unit 1a, East Fork of Greenbrier River, follows:

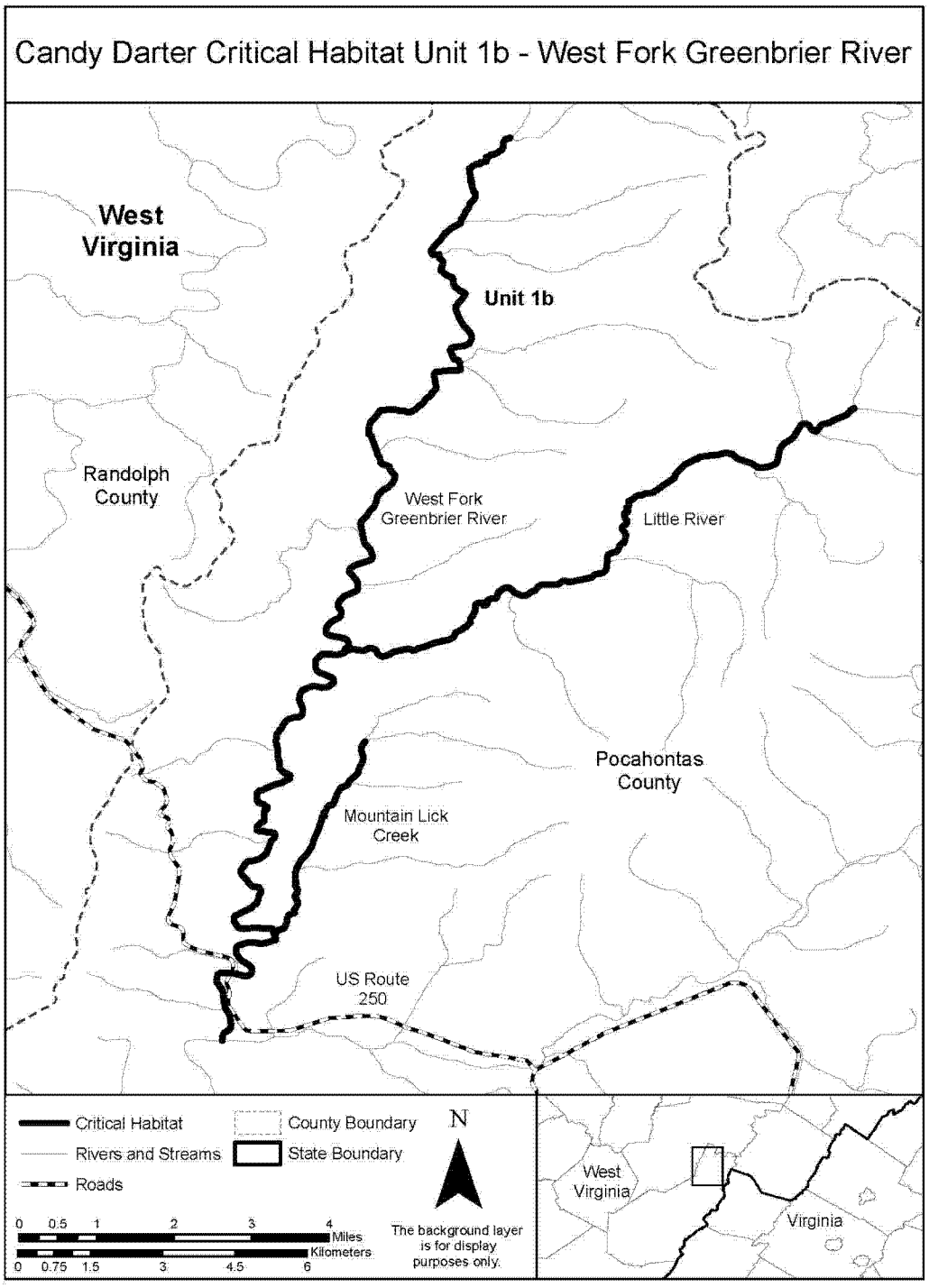


(8) *Unit 1b:* West Fork of Greenbrier River, Pocahontas County, West Virginia.

(i) *General description:* Unit 1b consists of approximately 29.9 skm (18.6 smi) of the West Fork of the Greenbrier River from the confluence with Snorting Lick Run, downstream to the confluence of the East Fork and West Fork of the Greenbrier River at Durbin, West Virginia; approximately 13.3 skm (8.3 smi) of the Little River from the confluence with Hansford Run, downstream to the confluence of the Little River and the West Fork of the Greenbrier River; and approximately 4.8 skm (3.0 smi) of Mountain Lick Creek from the confluence with an unnamed tributary (located 1.5 skm (0.9 smi) downstream of the Upper Mountain Lick Forest Service Road crossing), downstream to the confluence of Mountain Lick Creek and the West Fork of the Greenbrier River. Approximately 47.1 skm (29.3 smi) of Unit 1b is within the Monongahela National Forest with the remainder adjacent to almost

entirely private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like.

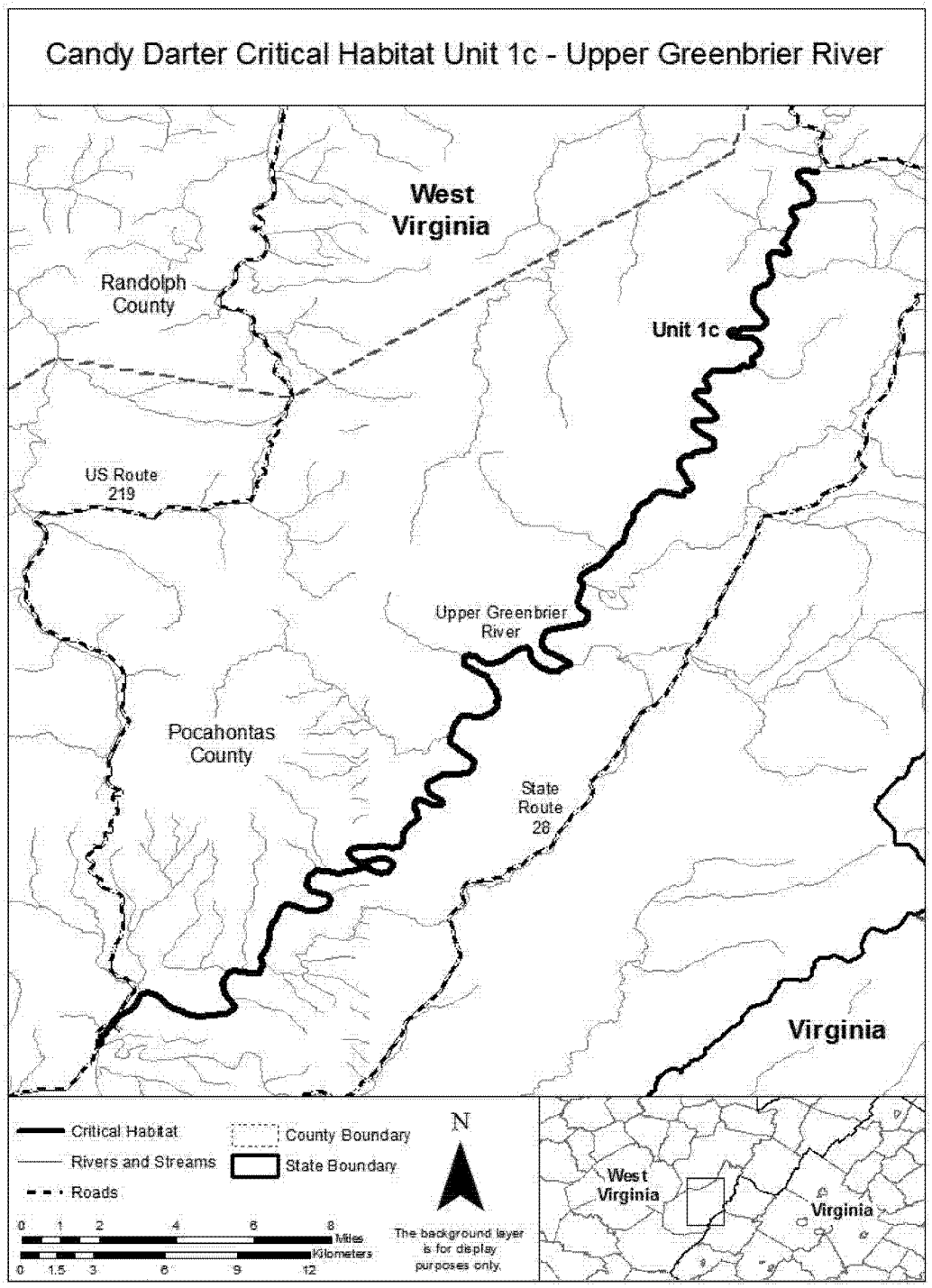
(ii) Map of Unit 1b, West Fork of Greenbrier River, follows:



(9) *Unit 1c:* Upper Greenbrier River, Pocahontas County, West Virginia.

(i) *General description:* Unit 1c consists of approximately 69.3 skm (43.1 smi) of the Greenbrier River from the confluence of the East Fork and West Fork of the Greenbrier River at Durbin, West Virginia, downstream to the confluence of Knapp Creek at Marlinton, West Virginia. Approximately 47.5 skm (29.5 smi) of Unit 1c is within the Monongahela National Forest and the Seneca State Forest, with the remainder adjacent to private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like.

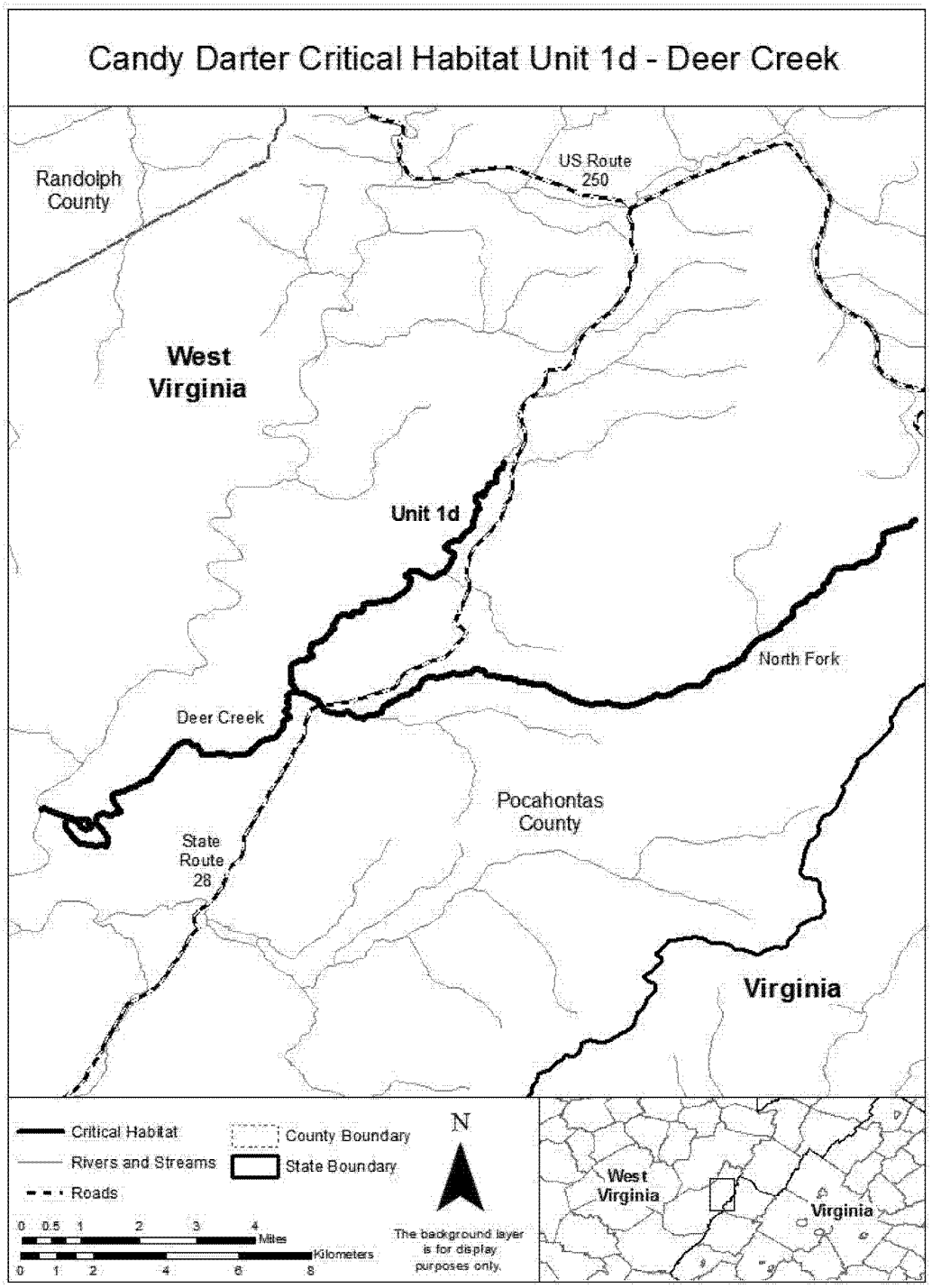
(ii) Map of Unit 1c, Upper Greenbrier River, follows:



(10) *Unit 1d:* Deer Creek, Pocahontas County, West Virginia.

(i) *General description:* Unit 1d consists of approximately 21.2 skm (13.2 smi) of Deer Creek from the confluence of Deer Creek and Saulsbury Run, downstream to the confluence with the Greenbrier River; and approximately 16.3 skm (10.1 smi) of North Fork from a point approximately 1.6 skm (1.0 smi) upstream of the Elleber Run confluence, downstream to the confluence of North Fork and Deer Creek. Approximately 10.0 skm (6.2 smi) of Unit 1d is within the Monongahela National Forest, with the remainder adjacent to private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like.

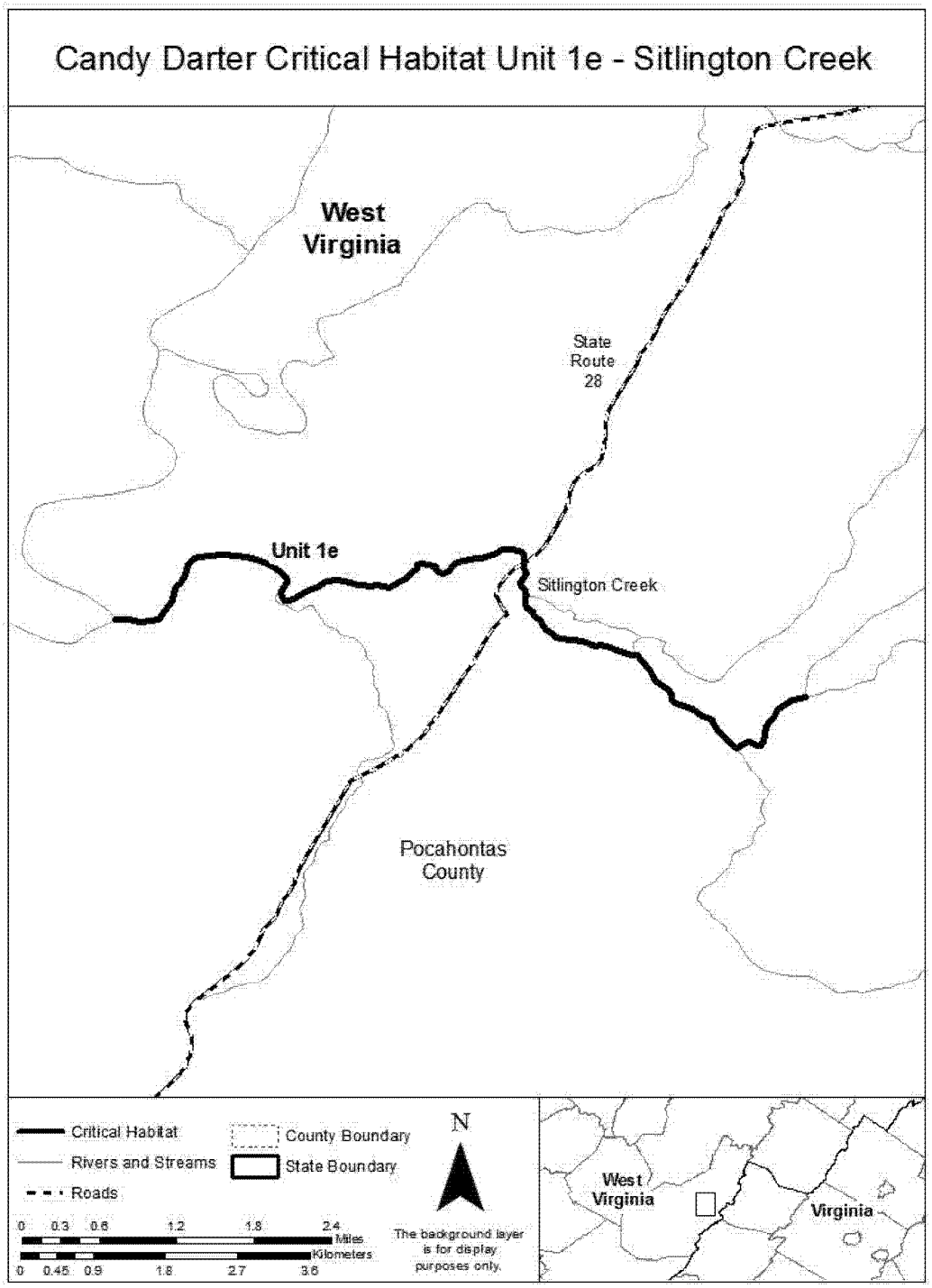
(ii) Map of Unit 1d, Deer Creek, follows:



(11) *Unit 1e:* Sitlington Creek, Pocahontas County, West Virginia.

(i) *General description:* Unit 1e consists of approximately 10.1 skm (6.3 smi) of Sitlington Creek from the confluence of Galford Run and Thorny Branch, downstream to the confluence with the Greenbrier River. Approximately 1.2 skm (0.7 smi) of Unit 1e is within the Monongahela National Forest, with the remainder adjacent to private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like.

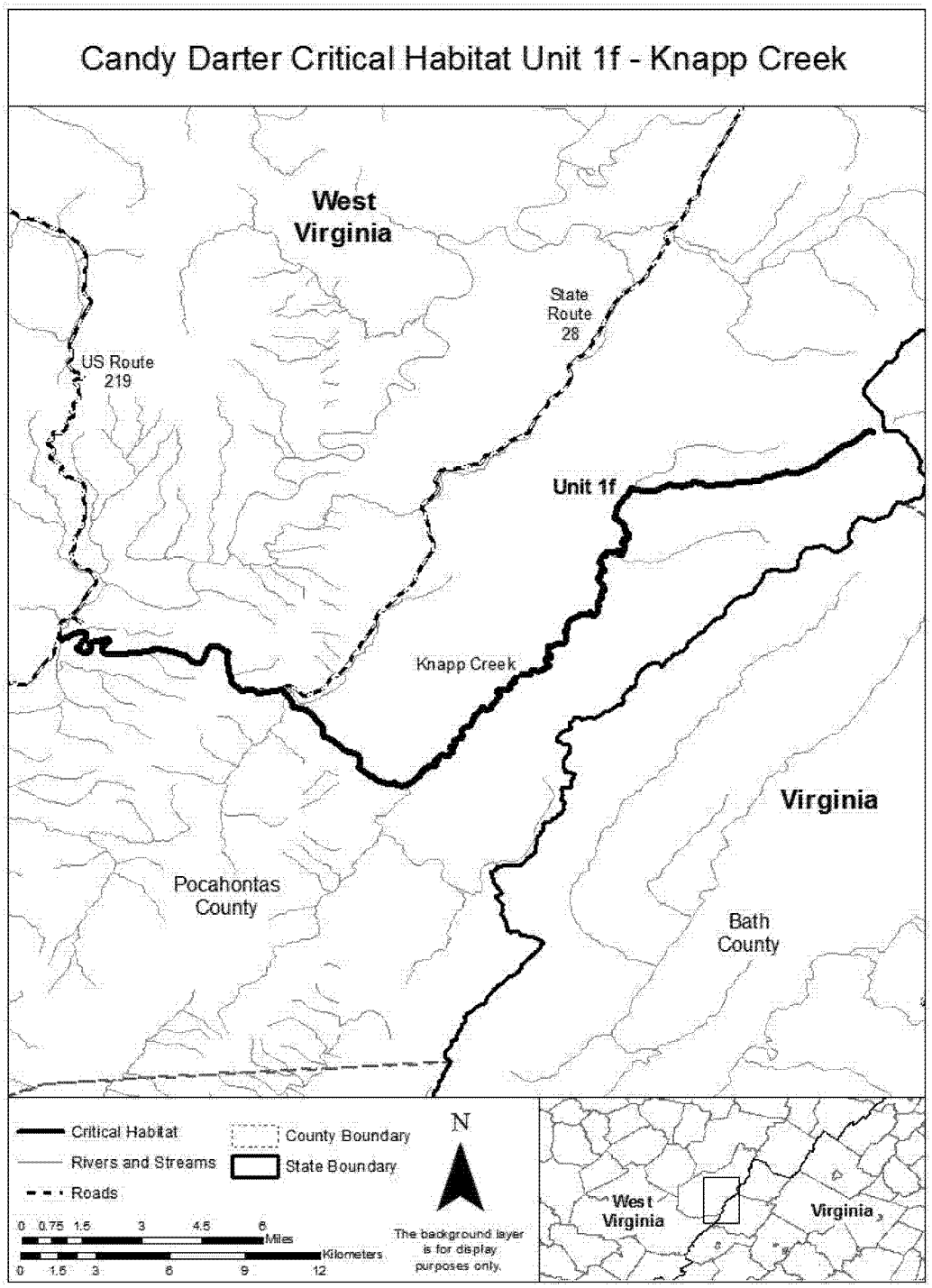
(ii) Map of Unit 1e, Sitlington Creek, follows:



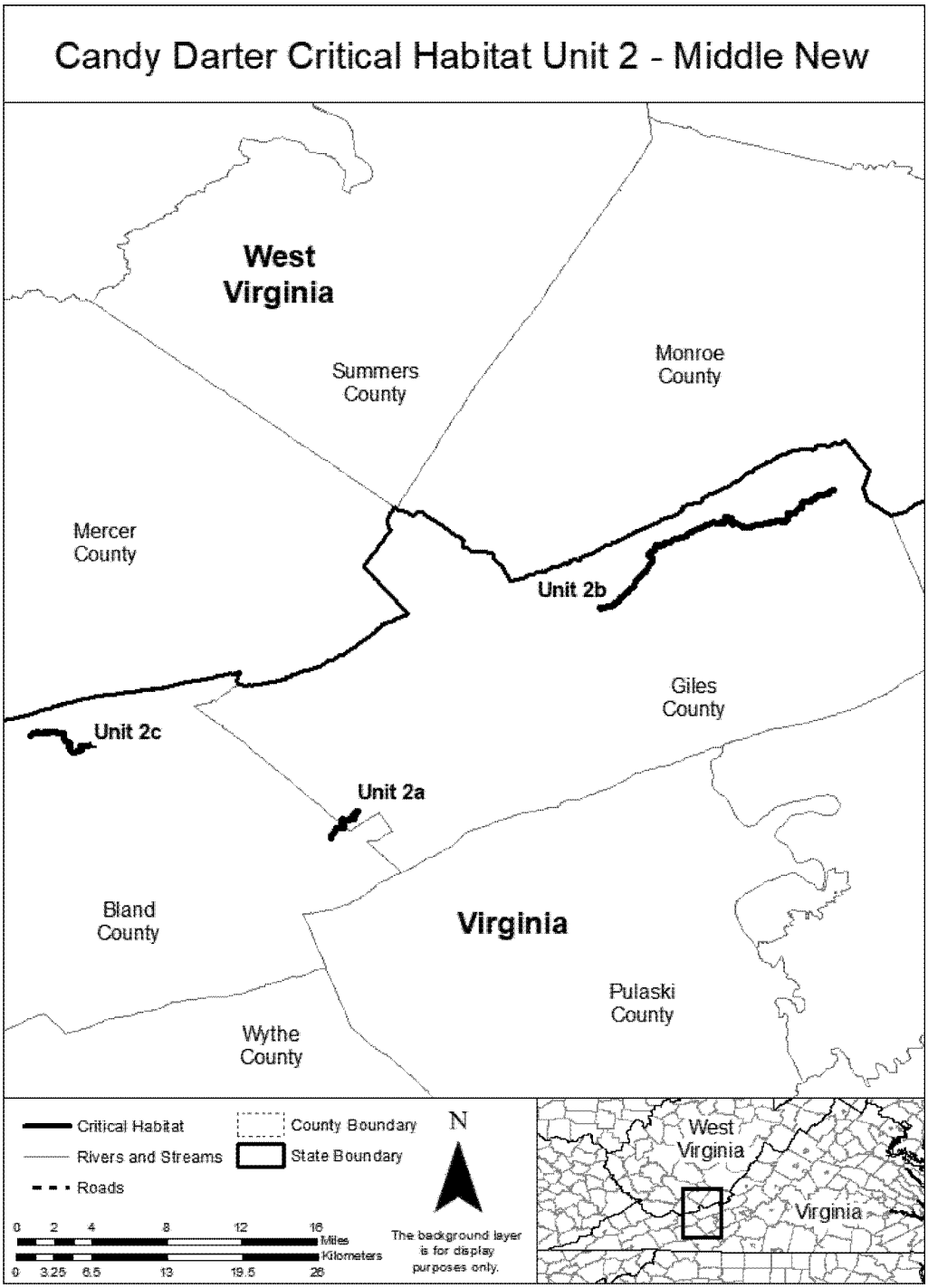
(12) *Unit 1f:* Knapp Creek, Pocahontas County, West Virginia.

(i) *General description:* Unit 1f consists of approximately 43.9 skm (27.3 smi) of Knapp Creek from a point approximately (0.1 smi) west of the WV Route 84 and Public Road 55 intersection, downstream to the confluence with the Greenbrier River at Marlinton, West Virginia. Approximately 7.2 skm (4.5 smi) of Unit 1f is within the Monongahela National Forest, with the remainder adjacent to private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like.

(ii) Map of Unit 1f, Knapp Creek, follows:



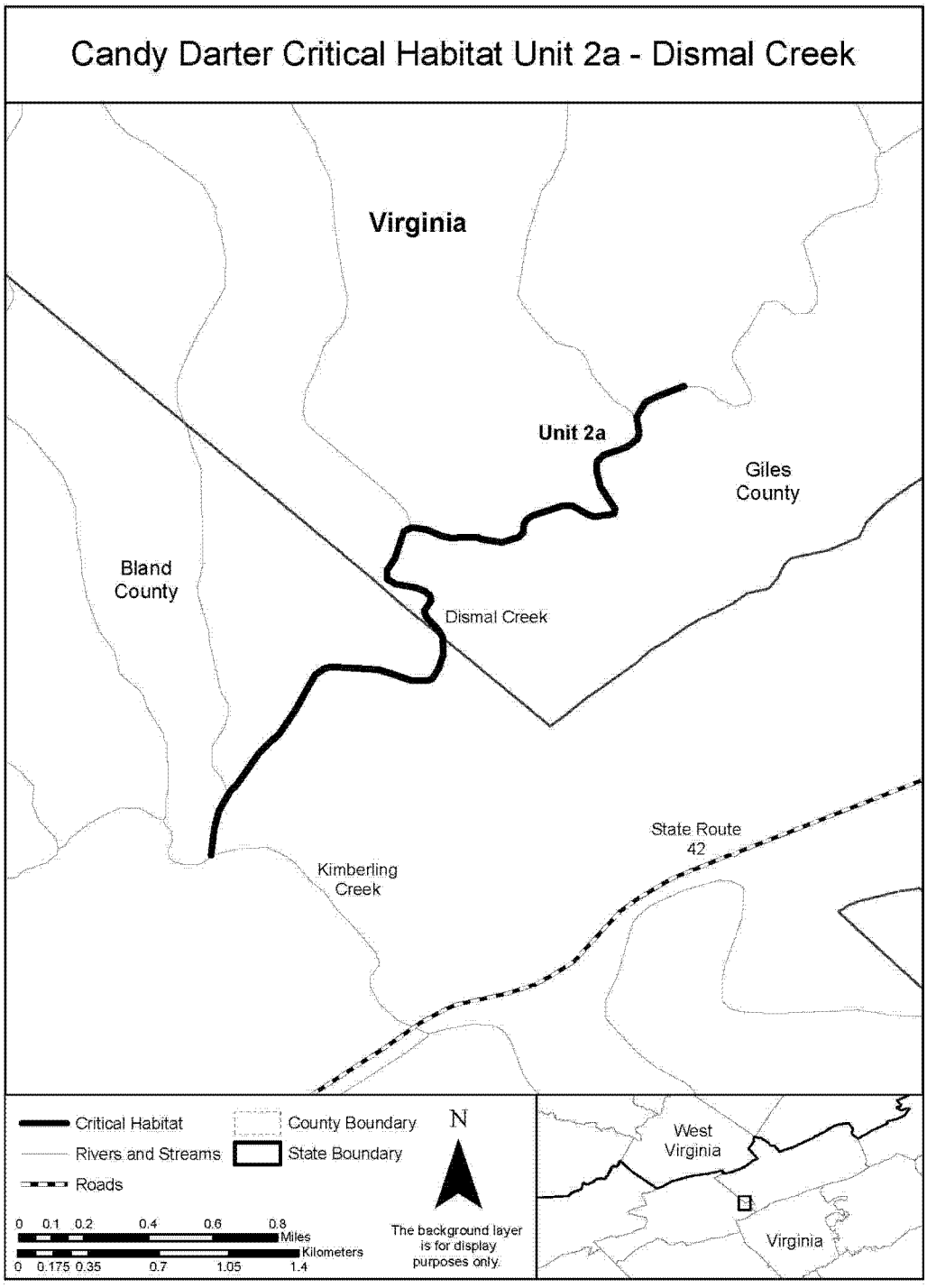
(13) Index map of Unit 2–Middle New follows:



(14) *Unit 2a:* Dismal Creek, Bland and Giles Counties, Virginia.

(i) *General description:* Unit 2a consists of approximately 4.2 skm (2.6 smi) of Dismal Creek from the confluence with Standrock Branch, downstream to the confluence of Dismal Creek and Kimberling Creek. Approximately 3.2 skm (2.0 smi) of Unit 2a is within the George Washington and Jefferson National Forest, with the remainder adjacent to private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like.

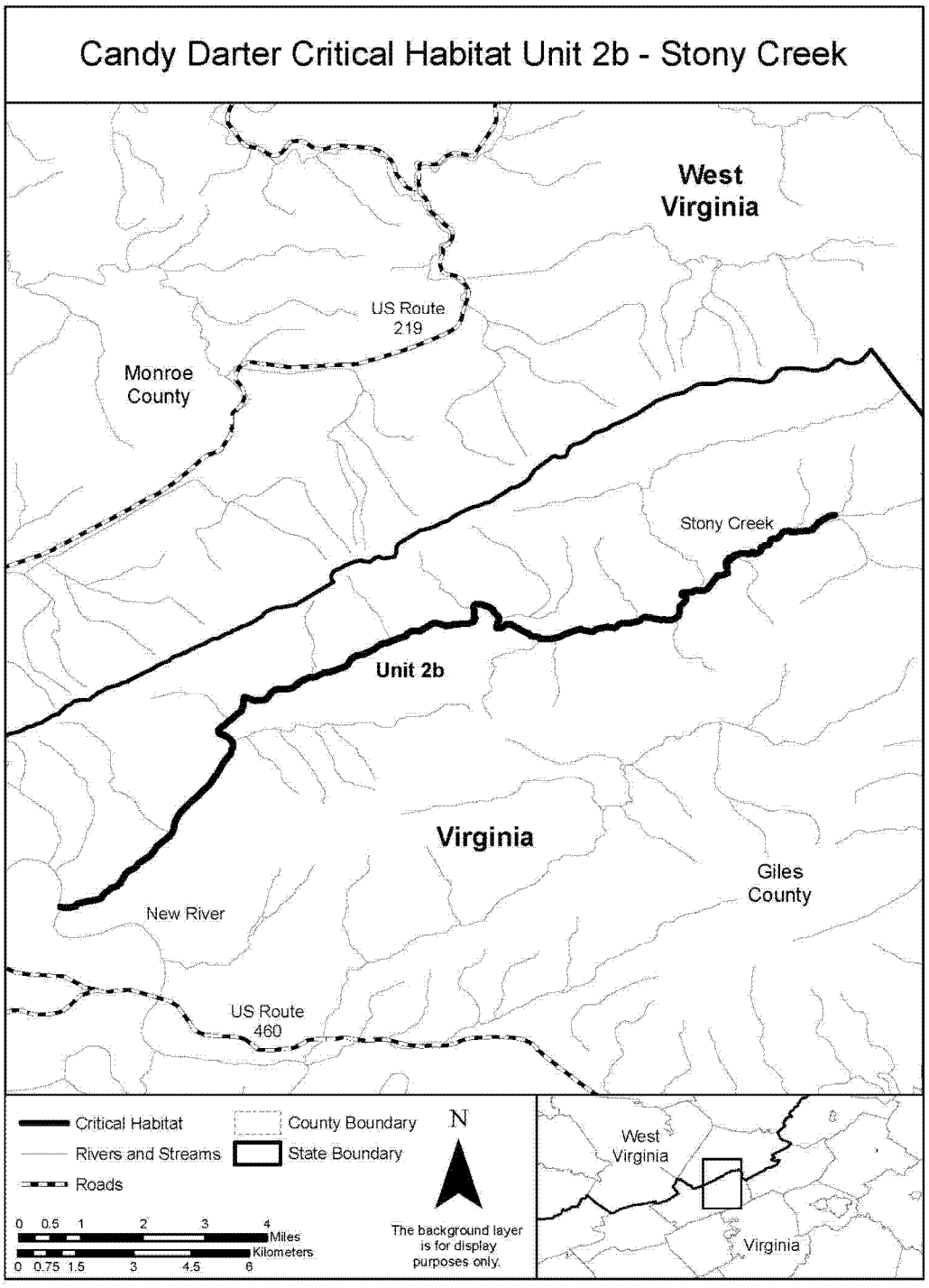
(ii) Map of Unit 2a, Dismal Creek, follows:



(15) *Unit 2b:* Stony Creek, Giles County, Virginia.

(i) *General description:* Unit 2b consists of approximately 31.1 skm (19.3 smi) of Stony Creek from the confluence with White Rock Branch, downstream to the confluence with the New River. Approximately 16.1 skm (10.0 smi) of Unit 2b is within the George Washington and Jefferson National Forest, with the remainder adjacent to private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like.

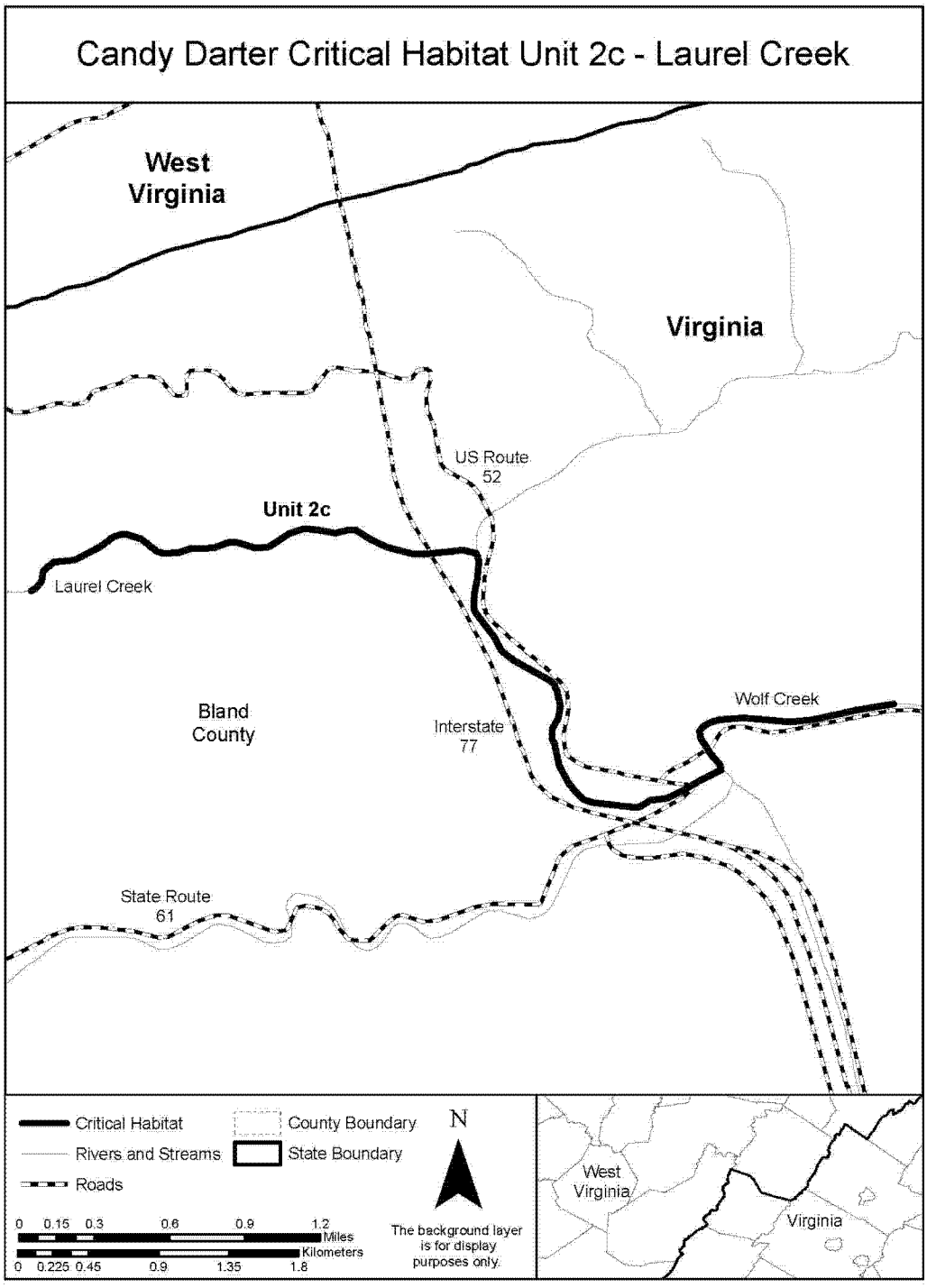
(ii) Map of Unit 2b, Stony Creek, follows:



(16) *Unit 2c:* Laurel Creek, Bland County, Virginia.

(i) *General description:* Unit 2c consists of approximately 5.1 skm (3.2 smi) of Laurel Creek from a point approximately 0.8 skm (0.5 smi) upstream of the unnamed pond, downstream to the confluence of Laurel Creek and Wolf Creek and approximately 1.4 skm (0.8 smi) of Wolf Creek from the Laurel Creek confluence downstream to the stream riffle adjacent to the intersection of Wolf Creek Highway and Alder Lane. Unit 2c is adjacent to private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like.

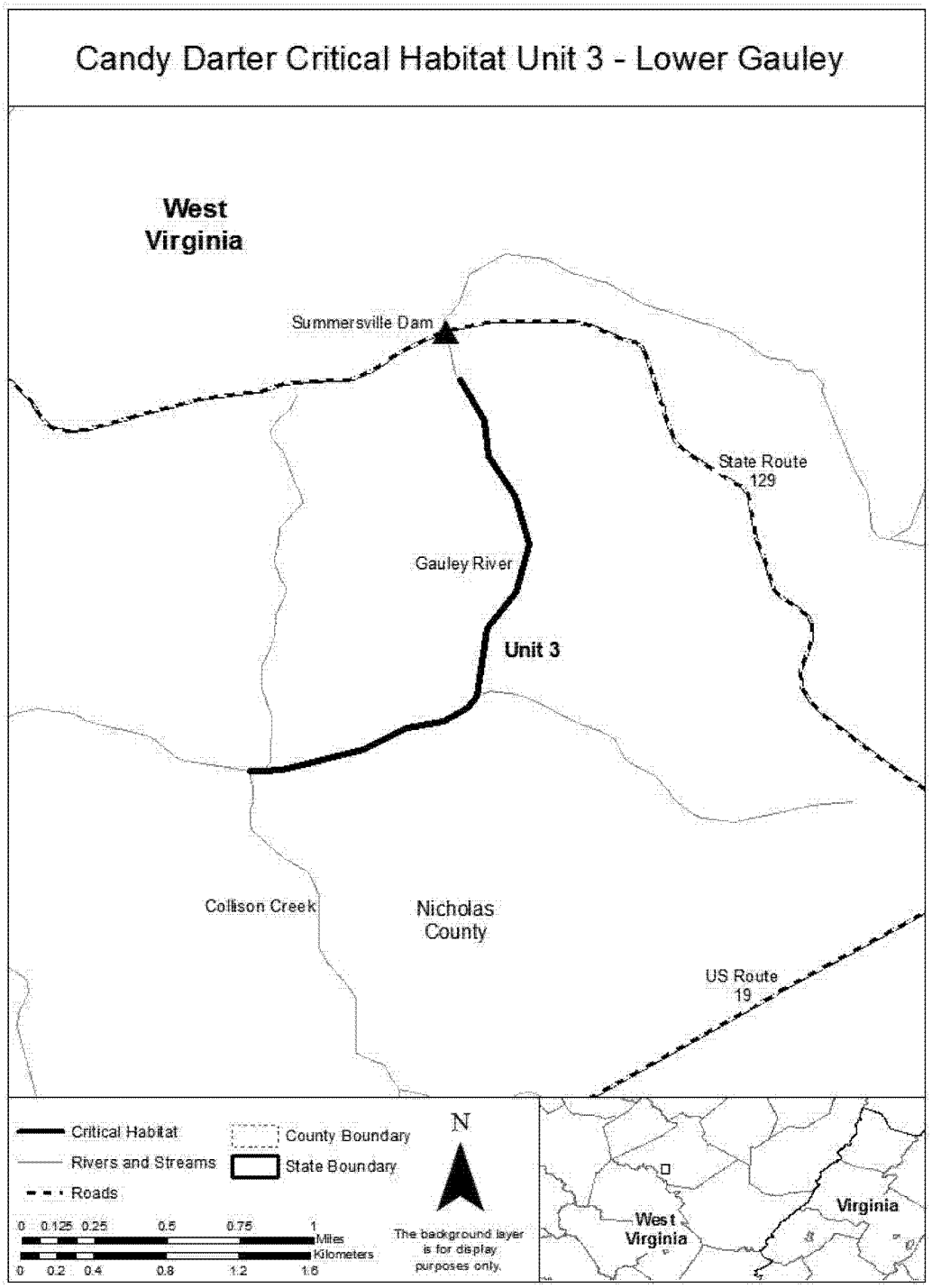
(ii) Map of Unit 2c, Laurel Creek, follows:



(17) *Unit 3:* Lower Gauley, ''Lower'' Gauley River, Nicholas County, West Virginia.

(i) *General description:* Unit 3 consists of approximately 2.9 skm (1.8 smi) of the Gauley River from the base of the Summersville Dam, downstream to the confluence of Collison Creek. The entirety of Unit 3 is within the National Park Service's Gauley River National Recreation Area and the U.S. Army Corps of Engineer's Summersville Recreation Area.

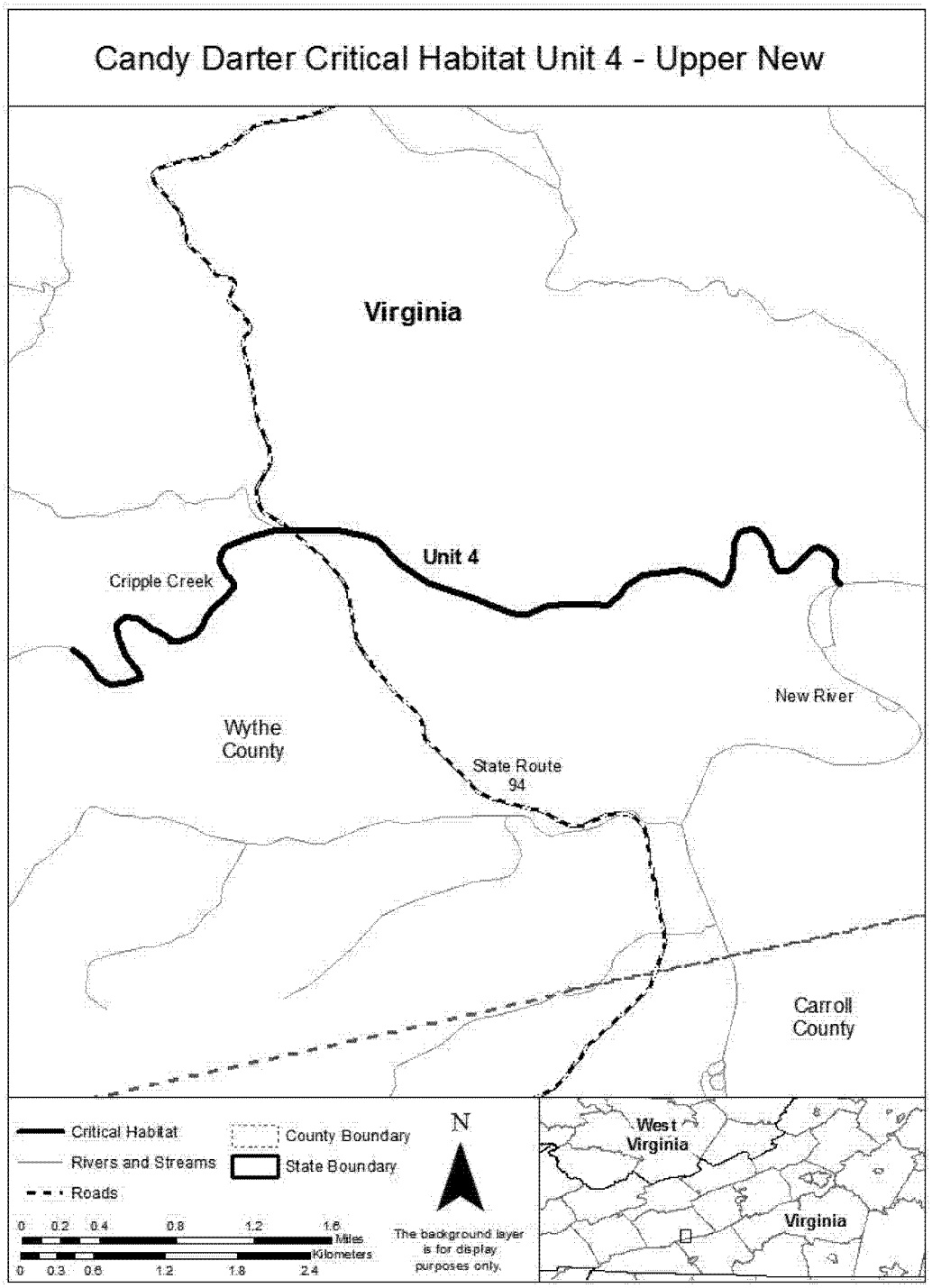
(ii) Map of Unit 3–Lower Gauley follows:



(18) *Unit 4:* Upper New, Cripple Creek, Wythe County, Virginia.

(i) *General description:* Unit 4 consists of approximately 7.9 skm (4.9 smi) of Cripple Creek from a point approximately (2.0 smi) upstream of the State Road 94 bridge, downstream to the confluence of Cripple Creek and the New River. The stream in Unit 4 is adjacent to private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like.

(ii) Map of Unit 4–Upper New
follows:

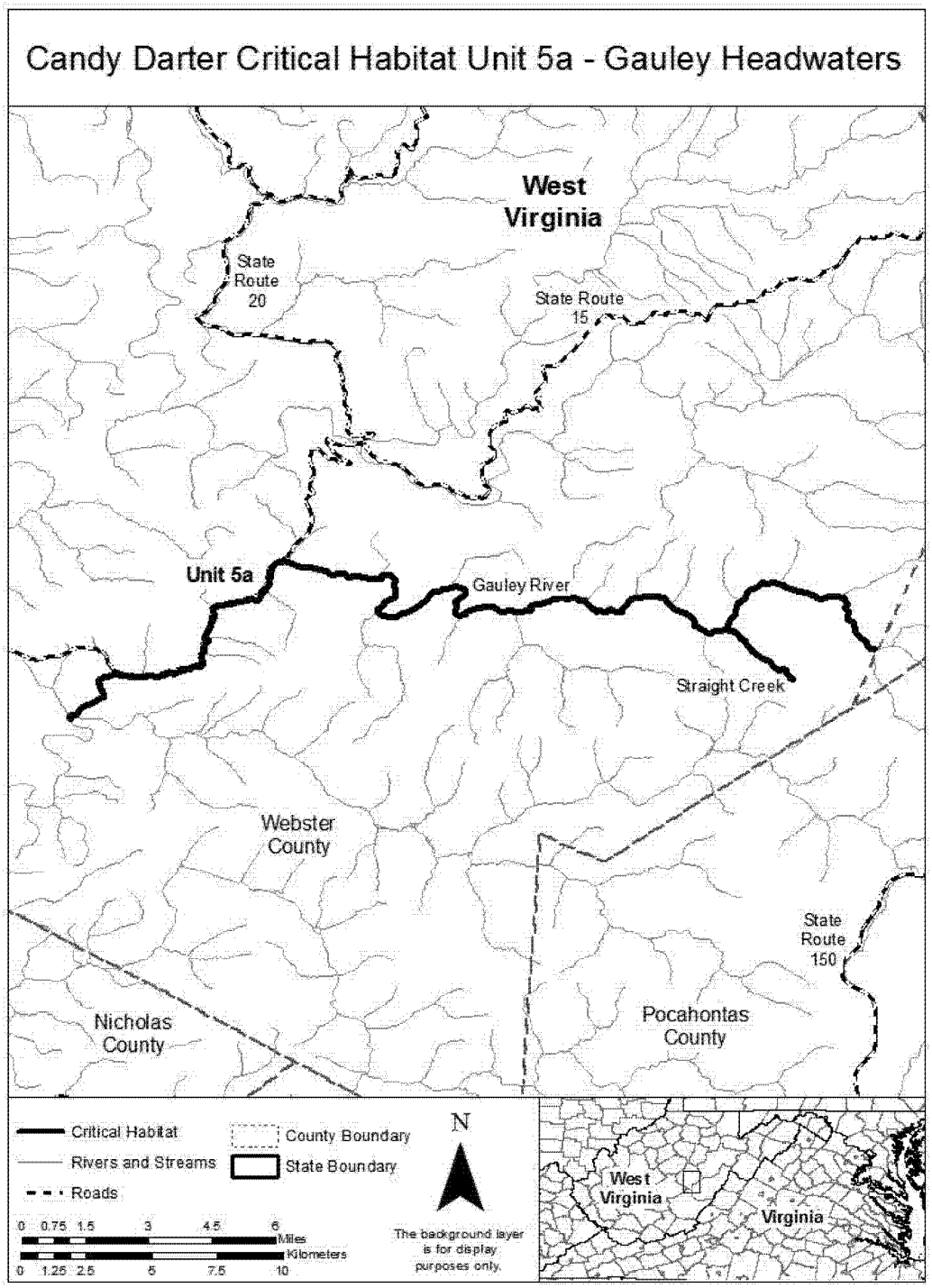


(19) Index map of Unit 5–Upper Gauley follows:

(20) *Unit 5a:* Gauley Headwaters, Webster County, West Virginia.

(i) *General description:* Unit 5a consists of approximately 37.3 skm (23.2 smi) of the Gauley River from the North and South Forks of the Gauley River, downstream to the confluence of the Gauley River and the Williams River at Donaldson, West Virginia; and 2.9 skm (1.8 smi) of Straight Creek from its confluence with the Gauley River to a point approximately 2.9 skm (1.8 smi) upstream of the confluence. Approximately 9.0 skm (5.6 smi) of Unit 5a is within the Monongahela National Forest. The remainder of the unit is adjacent to private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like.

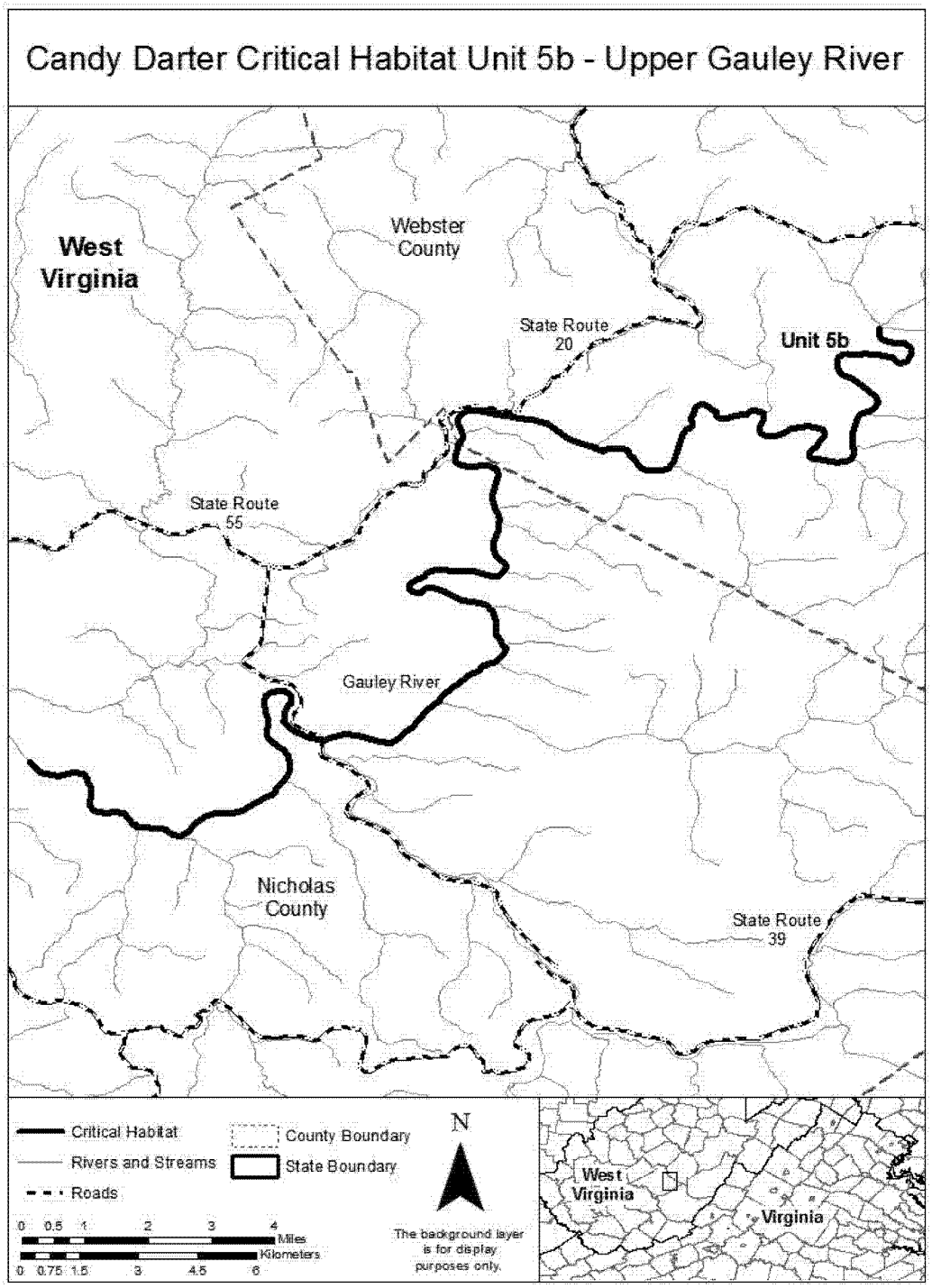
(ii) Map of Unit 5a, Gauley Headwaters, follows:



(21) *Unit 5b:* Upper Gauley River, Nicholas and Webster Counties, West Virginia.

(i) *General description:* Unit 5b consists of approximately 43.8 skm (27.2 smi) of the Gauley River from the confluence of the Gauley and Williams Rivers at Donaldson, West Virginia, downstream to a point approximately 1.6 skm (1.0 smi) upstream of the Big Beaver Creek confluence. Approximately 14.6 skm (9.2 smi) of Unit 5b is within the Monongahela National Forest and/or adjacent to land owned by the U.S. Army Corps of Engineers. The streams in the remainder of the unit are adjacent to private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like.

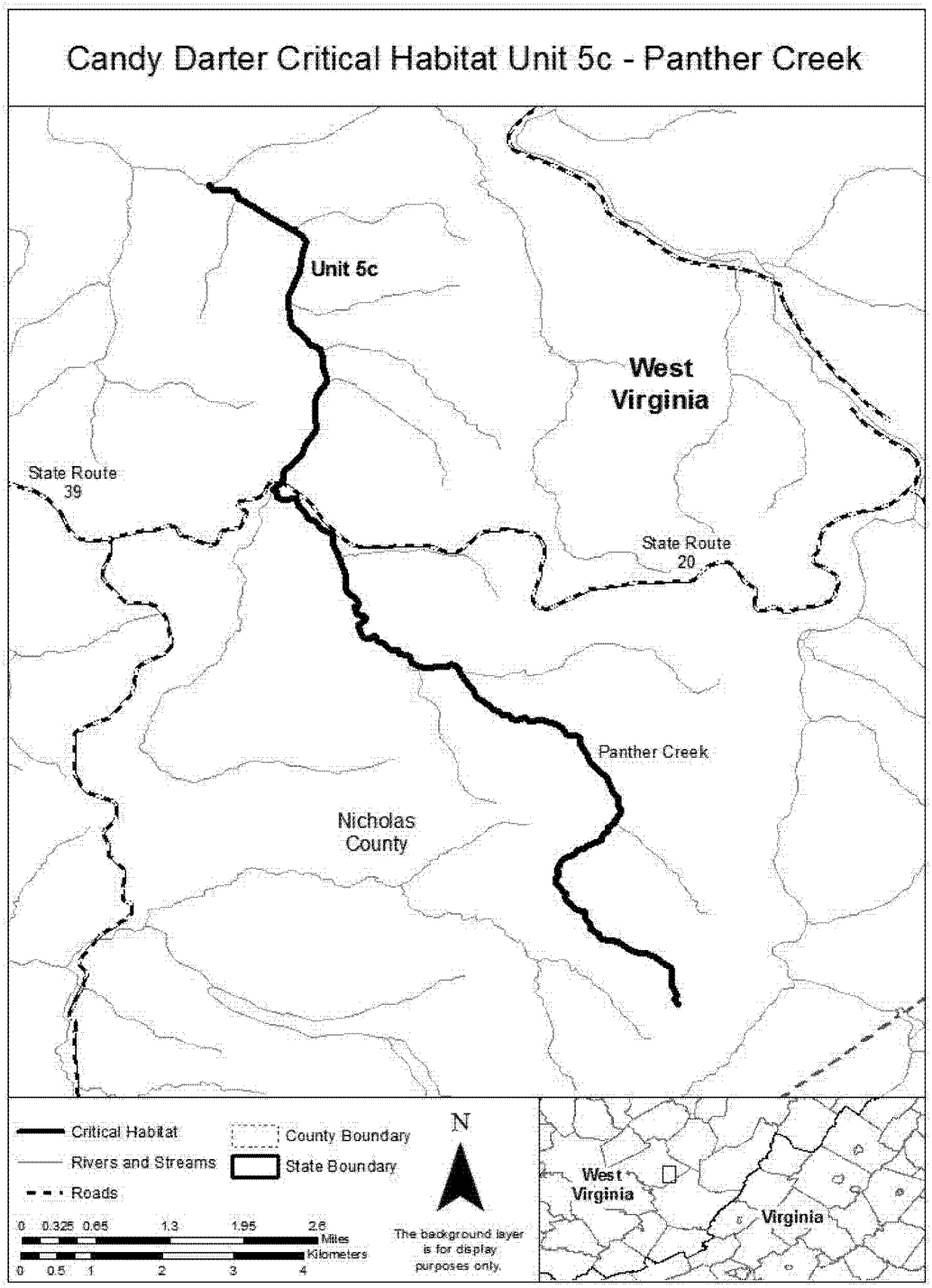
(ii) Map of Unit 5b, Upper Gauley River, follows:



(22) *Unit 5c:* Panther Creek, Nicholas County, West Virginia.

(i) *General description:* Unit 5c consists of approximately 16.3 skm (10.1 smi) of Panther Creek from a point approximately 1.1 skm (0.7 smi) upstream of the Grassy Creek Road crossing, downstream to the confluence with the Gauley River. The streams in Unit 5c are adjacent to private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like.

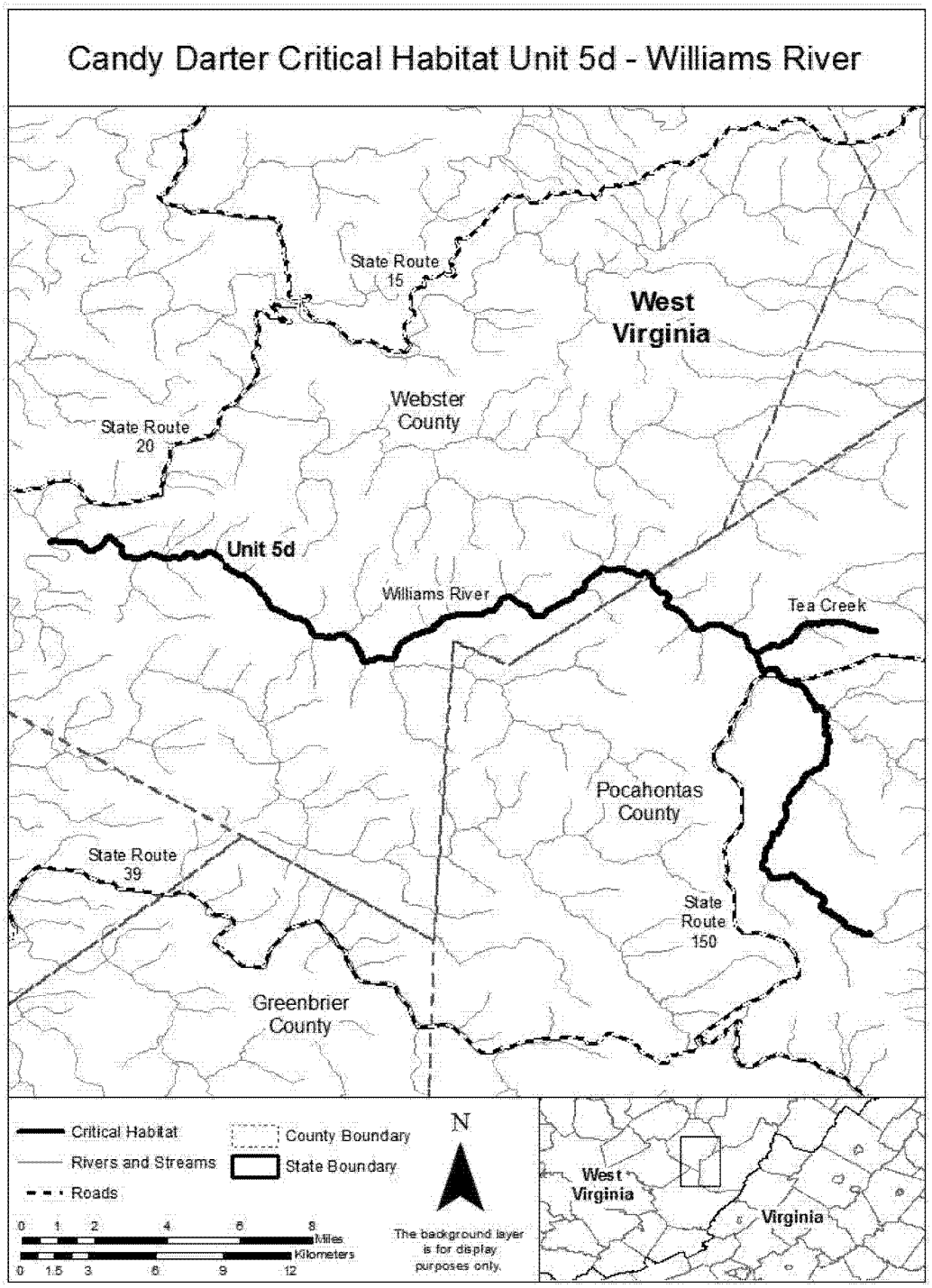
(ii) Map of Unit 5c, Panther Creek, follows:



(23) *Unit 5d:* Williams River, Pocahontas and Webster Counties, West Virginia.

(i) *General description:* Unit 5d consists of approximately 52.4 skm (32.6 smi) of the Williams River from the confluence with Beaverdam Run, downstream to the confluence of the Williams River and the Gauley River at Donaldson, West Virginia; and 5.1 skm (3.2 smi) of Tea Creek from a point on Lick Creek approximately 2.7 skm (1.7 smi) upstream of the Lick Creek confluence, downstream to the Tea Creek confluence with the Williams River. The streams in Unit 5d are entirely within the Monongahela National Forest.

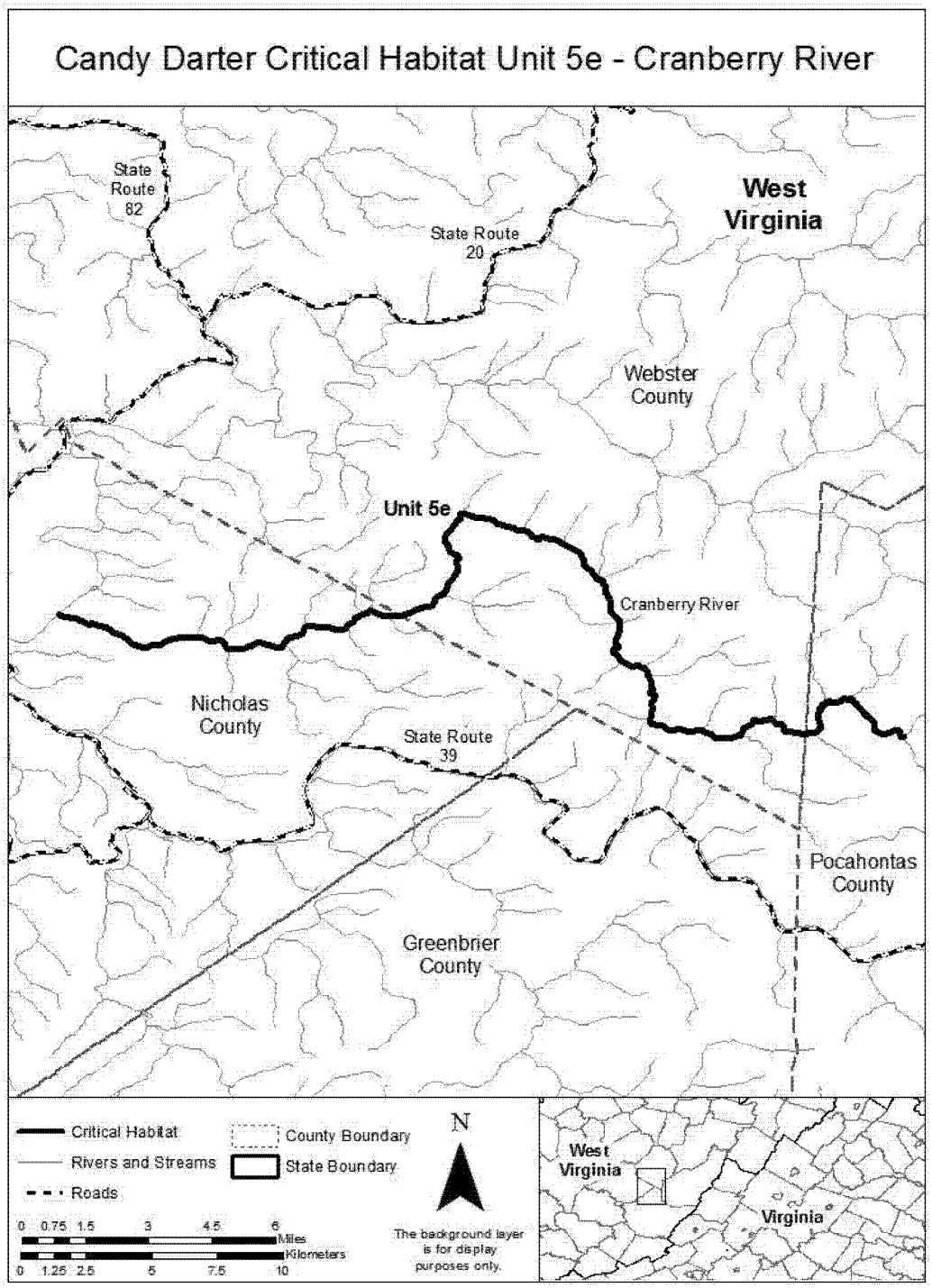
(ii) Map of Unit 5d, Williams River, follows:



(24) *Unit 5e:* Cranberry River, Nicholas and Webster Counties, West Virginia.

(i) *General description:* Unit 5e consists of approximately 39.3 skm (24.4 smi) of the Cranberry River from the confluence of the North and South Forks of the Cranberry River, downstream to the confluence of the Cranberry River and the Gauley River. This stream is entirely within the Monongahela National Forest.

(ii) Map of Unit 5e, Cranberry River, follows:

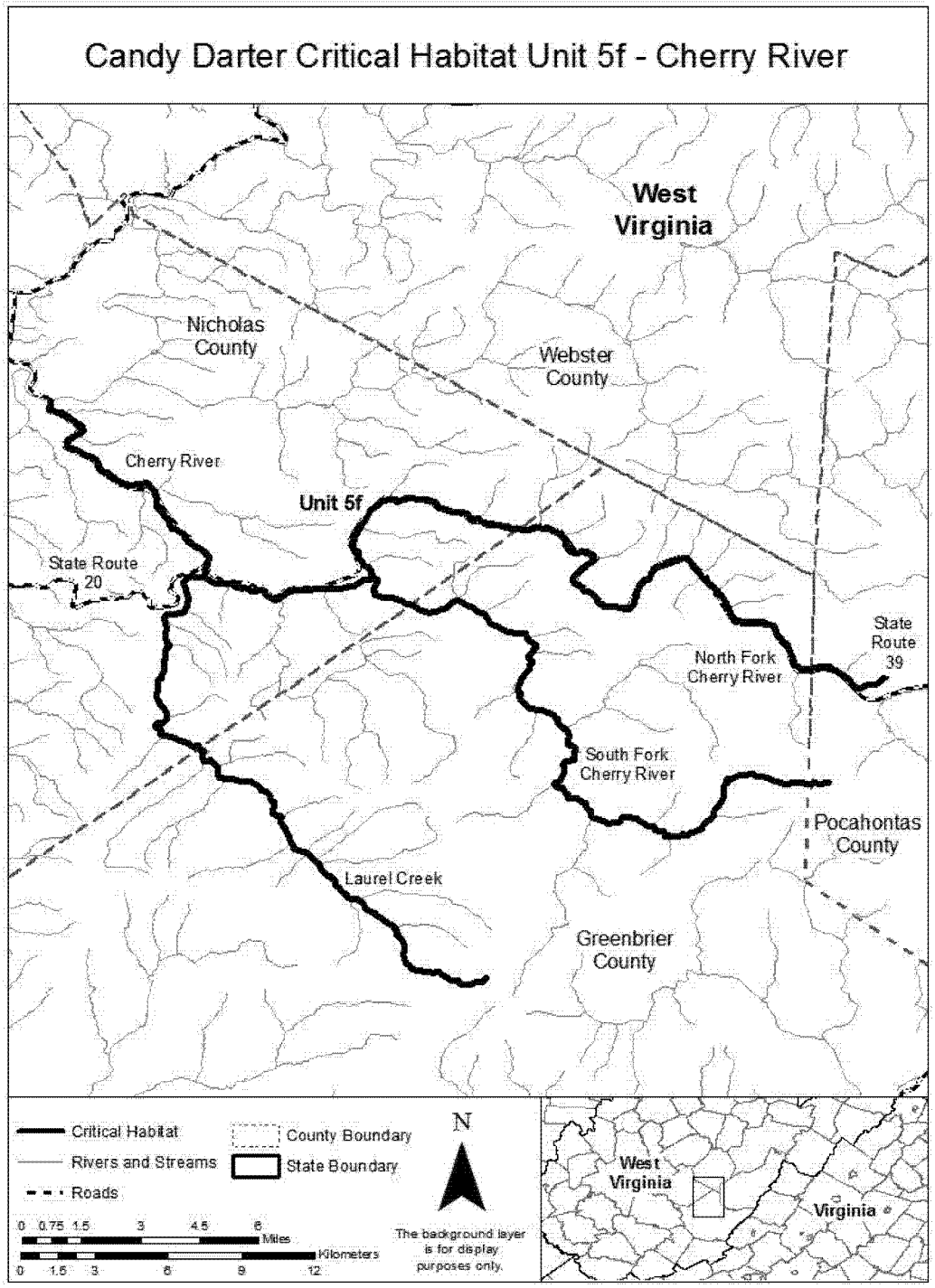


(25) *Unit 5f:* Cherry River, Greenbrier and Nicholas Counties, West Virginia.

(i) *General description:* Unit 5f consists of approximately 16.7 skm (10.4 smi) of Cherry River from the confluence of the North and South Forks of the Cherry River, downstream to the confluence of the Cherry River and the Gauley River; approximately 28.0 skm (17.4 smi) of the North Fork Cherry River from the Pocahontas Trail crossing, downstream to the confluence of the North and South Forks of the Cherry River; approximately 26.2 skm (16.3 smi) of the South Fork Cherry River from a point approximately 0.5 skm (0.3 smi) south of County Road 29/4 in Virginia, downstream to the confluence of the North and South Forks of the Cherry River; and approximately 24.9 skm (15.5 smi) of Laurel Creek from a point approximately 0.3 skm (0.2 smi) west of Cold Knob Road, downstream to the confluence of Laurel Creek and the Cherry River. Approximately 29.1 skm (18.1 smi) of Unit 5f is within the

Monongahela National Forest. The remainder is adjacent to private land, except for a small amount that is publicly owned in the form of bridge crossings, road easements, and the like.

(ii) Map of Unit 5f, Cherry River, follows:



* * * * *

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–06748 Filed 4–6–21; 8:45 am]

BILLING CODE 4333–15–C

Proposed Rules

Federal Register
Vol. 86, No. 65
Wednesday, April 7, 2021

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0255; Project Identifier AD–2020–01282–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. This proposed AD was prompted by reports that very high frequency (VHF) radio frequencies transfer between the active and standby windows of the tuning control panel (TCP) without flightcrew input. This proposed AD would require updating the TCP operational software (OPS) and performing a software configuration check. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 24, 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 NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced 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–2021–0255.

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–2021–0255; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

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:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0255; Project Identifier AD–2020–01282–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to 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 which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received reports indicating that VHF radio frequencies transfer between the active and standby windows of the TCP without flightcrew input. The flightcrew may not be aware of uncommanded frequency changes and could fail to receive air traffic control communications. Uncommanded frequency changes, if not addressed, could result in missed communications, such as amended clearances or critical instructions for changes to flight path, and consequent loss of safe separation between aircraft, collision, or runway incursion.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin B787–81205–SB230041–00 RB, Issue 002, dated September 14, 2020. The service information describes procedures for updating the TCP OPS on TCP C, TCP L, and TCP R, and for a performing a

software configuration check. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

The FAA is proposing 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.

Proposed AD Requirements

This proposed AD would require accomplishment of the actions identified in the service information described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0255.

Explanation of Requirements Bulletin

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (AD ARC), to enhance the AD system. One enhancement is a process for annotating which steps in the service information are ''required for compliance'' (RC) with an AD. Boeing has implemented this RC concept into Boeing service bulletins.

In an effort to further improve the quality of ADs and AD-related Boeing service information, a joint process improvement initiative was worked between the FAA and Boeing. The initiative resulted in the development of a new process in which the service information more clearly identifies the actions needed to address the unsafe condition in the ''Accomplishment Instructions.'' The new process results in a Boeing Requirements Bulletin, which contains only the actions needed to address the unsafe condition (*i.e.,* only the RC actions).

Costs of Compliance

The FAA estimates that this proposed AD affects 89 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Update software and perform check	0.75 work-hour × $85 per hour = $63.75	$0	$63.75	$5,673.75

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2021–0255; Project Identifier AD–2020–01282–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by May 24, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin B787–81205–SB230041–00 RB, Issue 002, dated September 14, 2020.

(d) Subject

Air Transport Association (ATA) of America Code 23, Communications.

(e) Unsafe Condition

This AD was prompted by reports that very high frequency (VHF) radio frequencies transfer between the active and standby windows of the tuning control panel (TCP) without flightcrew input. The FAA is issuing this AD to address uncommanded frequency changes, which could result in missed air traffic control communications such as amended clearances and critical instructions for changes to flight path, and consequent loss of safe separation between aircraft, collision, or runway incursion.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB230041–00 RB, Issue 002, dated September 14, 2020, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–

SB230041–00 RB, Issue 002, dated September 14, 2020.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin B787–81205–SB230041–00, Issue 002, dated September 14, 2020, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB230041–00 RB, Issue 002, dated September 14, 2020.

(h) Exception to Service Information Specifications

Where Boeing Alert Requirements Bulletin B787–81205–SB230041–00 RB, Issue 002, dated September 14, 2020, uses the phrase ''the Issue 001 date of Requirements Bulletin B787–81205–SB230041–00 RB,'' this AD requires using ''the effective date of this AD.''

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Requirements Bulletin B787–81205–SB230041–00 RB, Issue 001, dated April 24, 2020.

(j) 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 (k)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(k) Related Information

(1) 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.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on March 25, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–07164 Filed 4–6–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0261; Project Identifier MCAI–2020–01502–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2019–19–06, which applies to certain Airbus SAS Model A330–202, –243, –243F, –302, –323, and –343 airplanes. AD 2019–19–06 requires an inspection to determine the part number and serial number of the slat geared rotary actuators (SGRAs), and replacement of each affected SGRA with a serviceable part. Since the FAA issued AD 2019–19–06, it was determined that the requirements of AD 2019–19–06 may not ensure the permanent removal from service of affected SGRAs. This proposed AD would continue to require replacement of each affected SGRA with a serviceable part, and would expand the applicability to include all airplanes on which the affected part may be installed. This proposed AD would also prohibit installation of an affected part, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 24, 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 material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0261.

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–2021–0261; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *Vladimir.Ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0261; Project Identifier MCAI–2020–01502–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR

11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *Vladimir.Ulyanov@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The FAA issued AD 2019–19–06, Amendment 39–19742 (84 FR 51960, October 1, 2019) (AD 2019–19–06), which applies to certain Airbus SAS Model A330–202, –243, –243F, –302, –323, and –343 airplanes. AD 2019–19–06 requires an inspection to determine the part number and serial number of the SGRAs, and replacement of each affected SGRA with a serviceable part. The FAA issued AD 2019–19–06 to address cracking of an SGRA, which, in combination with an independent failure on the second SGRA of the same slat surface, could lead to an uncontrolled movement of the affected slat surface in flight, or detachment of the slat surface, and could possibly result in damage to the stabilizers and reduced controllability of the airplane.

Actions Since AD 2019–19–06 Was Issued

Since the FAA issued AD 2019–19–06, it was confirmed that the affected parts were still installed on the airplanes specified in that AD. It was also determined that the requirements of AD 2019–19–06 may not ensure the permanent removal from service of affected SGRAs. Therefore, affected parts that were removed from airplanes could later be installed on other airplanes. EASA and the FAA have determined that a new AD is necessary to prohibit the (re)installation of affected parts.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0245, dated November 9, 2020 (EASA AD 2020–0245) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus A330–201, A330–202, A330–203, A330–223, A330–223F, A330–243, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, A330–343, A330–743L, A330–841, and A330–941 airplanes. EASA AD 2020–0245 supersedes EASA AD 2019–0093 (which corresponds to FAA AD 2019–19–06). Model A330–743L airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a report that cracks have been found within the ring gears of the SGRAs due to a change in the manufacturing process and inadequate post-production non-destructive testing for potential cracking, and a determination that the requirements of AD 2019–19–06 may not ensure the permanent removal from service of affected SGRAs. The FAA is proposing this AD to address cracking of an SGRA, which, in combination with an independent failure on the second SGRA of the same slat surface, could lead to an uncontrolled movement of the affected slat surface in flight, or detachment of the slat surface, and could possibly result in damage to the stabilizers and reduced controllability of the airplane. See the MCAI for additional background information.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2019–19–06, this proposed AD would retain certain requirements of AD 2019–19–06. Those requirements are referenced in EASA AD 2020–0245, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2020–0245 describes procedures for replacing each affected SGRA, and specifies a prohibition against installation of an affected part.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2020–0245 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0245 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0245 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance

Time(s)'' in the EASA AD. Service information specified in EASA AD 2020–0245 that is required for compliance with EASA AD 2020–0245 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0261 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 123 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained action from AD 2019–19–06.	17 work-hours × $85 per hour = $1,445	*$0	$1,445	$177,735.
New proposed actions	Up to 15 work-hours × $85 per hour = Up to $1,275.	*$0	Up to $1,275	Up to $156,825.

*The FAA has received no definitive data on which to base the cost estimates for the parts specified in this proposed AD.

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2019–19–06, Amendment 39–19742 (84 FR 51960, October 1, 2019) (AD 2019–19–06), and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2021–0261; Project Identifier MCAI–2020–01502–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by May 24, 2021.

(b) Affected ADs

This AD replaces AD 2019–19–06, Amendment 39–19742 (84 FR 51960, October 1, 2019) (AD 2019–19–06).

(c) Applicability

This AD applies to all Airbus SAS airplanes specified in paragraphs (c)(1) through (5) of this AD, certificated in any category.

(1) Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Model A330–223F and –243F airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A330–841 airplanes.

(5) Model A330–941 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by a report that cracks have been found within the ring gears of the slat geared rotary actuators (SGRAs) due to a change in the manufacturing process and inadequate post-production non-destructive testing for potential cracking, and a determination that the requirements of AD 2019–19–06 may not ensure the permanent removal from service of affected SGRAs. The FAA is issuing this AD to address cracking of an SGRA, which, in combination with an independent failure on the second SGRA of the same slat surface, could lead to an uncontrolled movement of the affected slat surface in flight, or detachment of the slat surface, and could possibly result in damage to the stabilizers and reduced controllability of the airplane.

(f) Compliance

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

■ (g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0245, dated November 9, 2020 (EASA AD 2020–0245).

(h) Exceptions to EASA AD 2020–0245

(1) Where EASA AD 2020–0245 refers to May 10, 2019 (the effective date of EASA AD 2019–0093), this AD requires using November 5, 2019 (the effective date of AD 2019–19–06).

(2) Where paragraph (1) of EASA AD specifies to ''replace each affected part with a serviceable part in accordance with the instructions of the SB,'' this AD requires ''removal of each affected part and installation of a serviceable part in accordance with paragraphs 3.C. (2) and 3.C. (3) of the SB.''

(3) Where EASA AD 2020–0245 refers to its effective date, this AD requires using the effective date of this AD.

(4) The ''Remarks'' section of EASA AD 2020–0245 does not apply to this AD.

■ (i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2020–0245 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) For information about EASA AD 2020–0245, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0261.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *Vladimir.Ulyanov@faa.gov.*

Issued on March 30, 2021.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–07090 Filed 4–6–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0264; Project Identifier MCAI–2020–01416–T]

RIN 2120–AA64

Airworthiness Directives; MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain MHI RJ Aviation ULC Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes. This proposed AD was prompted by a report that the lower aft outboard supporting structure of galley 2 does not meet certification requirements for all flight and/or emergency landing loads. This proposed AD would require modifying the floor structure between certain fuselage stations. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 24, 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 NPRM, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1 Canada; Widebody Customer Response Center North America toll-free telephone +1–844–272–2720 or direct-dial telephone +1–514–855–8500; fax +1–514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0264; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0264; Project Identifier MCAI–2020–01416–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Andrea Jimenez, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2020–40, dated October 15, 2020, (referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain MHI RJ Aviation ULC Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0264.

This proposed AD was prompted by a report that the lower aft outboard supporting structure of galley 2 does not meet certification requirements for all flight and/or emergency landing loads. The FAA is proposing this AD to address the insufficient structural safety margin of galley 2 in case of hard landing or severe turbulence. This condition, if not corrected, could result in injury to the occupants and could limit access to the exit door during emergencies if the galley is displaced or fails structurally. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

MHI RJ has issued MHI RJ Service Bulletin 670BA–53–060, Revision A, dated September 17, 2020. This service information describes procedures for modifying the floor structure between fuselage station (FS) 379.00 and FS 394.00 at right buttock line (RBL) 37.75. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

The FAA estimates that this proposed AD affects 1 airplane of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
20 work-hours × $85 per hour = $1,700	$5,081	$6,781	$6,781

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Bombardier, Inc.: Docket No. FAA–2021–0264; Project Identifier MCAI–2020–01416–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by May 24, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to MHI RJ Aviation ULC (type certificate previously held by Bombardier, Inc.) Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, certificated in any category, having serial numbers 15057, 15063 through 15065 inclusive, 15071, 15074, 15079, 15087, 15090, 15106, 15111, 15113, 15115, and 15117.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that the lower aft outboard supporting structure of galley 2 does not meet certification requirements for all flight and/or emergency landing loads. The FAA is issuing this AD to address the insufficient structural safety margin of galley 2 in case of hard landing or severe turbulence. This condition, if not corrected, could result in injury to the occupants and could limit access to the exit door during emergencies if the galley is displaced or fails structurally.

(f) Compliance

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

(g) Required Actions

Within 36 months after the effective date of this AD: Modify the floor structure between fuselage station (FS) 379.00 and FS 394.00 at right buttock line (RBL) 37.75 in accordance with paragraph 2.B. of the Accomplishment Instructions of MHI RJ Service Bulletin 670BA–53–060, Revision A, dated September 17, 2020.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using MHI RJ Service Bulletin 670BA–53–060, dated August 6, 2020.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or MHI RJ Aviation ULC's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2020–40, dated October 15, 2020, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0264.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1 Canada; Widebody Customer Response Center North America toll-free telephone +1–844–272–2720 or direct-dial telephone +1–514–855–8500; fax +1–514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on March 31, 2021.

Gaetano A. Sciortino,

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

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 27

[AU Docket No. 21–62; FCC 21–33; FR ID 17995]

Auction of Flexible-Use Service Licenses in the 3.45–3.55 GHz Band for Next-Generation Wireless Services; Comment Sought on Competitive Bidding Procedures for Auction 110

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; proposed auction procedures.

SUMMARY: In this document, the Commission announces the auction of new flexible-use licenses in the 3.45–3.55 GHz band (the 3.45 GHz Service) designated as Auction 110. This document proposes and seeks comment on auction procedures to be used for Auction 110.

DATES: Comments are due on or before April 14, 2021, and reply comments are due on or before April 29, 2021.

ADDRESSES: Interested parties may file comments or reply comments in AU Docket No. 21–62. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. The Commission strongly encourages interested parties to file comments electronically.

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS at *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings in response to the Auction 110 Comment Public Notice can be sent by commercial courier or by the U.S. Postal Service. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission
- Commercial deliveries (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Dr., Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, or Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.
- *Email:* We also request that a copy of all comments and reply comments be

submitted electronically to the following address: *auction110@fcc.gov.*

FOR FURTHER INFORMATION CONTACT:

Auction Legal Questions: Mary Lovejoy, (202) 418–0660, *Mary.Lovejoy@fcc.gov,* or Andrew McArdell, (202) 418–0660, *Andrew.McArdell@fcc.gov.*

General Auction Questions: (717) 338–2868.

3.45–3.55 GHz Band Legal Questions: Joyce Jones, (202) 418–1327, *Joyce.Jones@fcc.gov.*

3.45–3.55 GHz Band Technical Questions: Ira Keltz, (202) 418–0616, *Ira.Keltz@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Public Notice (*Auction 110 Comment Public Notice*), AU Docket No. 21–62, FCC 21–33, adopted on March 17, 2021, and released on March 18, 2021. The *Auction 110 Comment Public Notice* includes the following attachments: Attachment A, Proposed Upfront Payment and Minimum Opening Bid Amounts. The complete text of the *Auction 110 Comment Public Notice,* including its attachments, is available on the Commission's website at *www.fcc.gov/auction/110* or by using the search function for AU Docket No. 21–62 on the Commission's ECFS web page at *www.fcc.gov/ecfs.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

I. Introduction

1. By the *Auction 110 Comment Public Notice,* the Commission seeks comment on the procedures to be used for Auction 110, the auction of new flexible-use licenses in the 3.45–3.55 GHz band (the 3.45 GHz Service). The Commission expects the bidding for licenses in Auction 110 to commence in early October 2021. The Commission proposes to use an ascending clock auction format for the licenses offered in Auction 110. By initiating the pre-auction processes for assigning licenses in Auction 110, the Commission takes another important step towards releasing critical mid-band spectrum to the market and furthering the deployment of fifth-generation (5G) and other advanced wireless services across the country. The *Auction 110 Comment Public Notice* seeks comment on proposed auction procedures for bidding to acquire licenses in Auction 110.

II. Licenses To Be Offered in Auction 110

2. Auction 110 will offer 4,060 new flexible-use licenses for spectrum in the 3.45–3.55 GHz band throughout the contiguous United States, subject to cooperative sharing requirements. The Commission will offer up to 100 megahertz of spectrum licensed on an unpaired basis and divided into ten 10-megahertz blocks in partial economic area (PEA)-based geographic areas located in the contiguous 48 states and the District of Columbia (PEAs 1 through 41, 43 through 211, 213 through 263, 265 through 297, 299 through 359, and 361 through 411). At this time, the Commission will not issue flexible-use licenses for the following PEAs: Honolulu, Anchorage, Kodiak, Fairbanks, Juneau, Puerto Rico, Guam-Northern Mariana Islands, U.S. Virgin Islands, American Samoa, and the Gulf of Mexico (PEA numbers 42, 212, 264, 298, 360, 412 through 416). The Commission will designate these 10-megahertz blocks A through J.

3. All 3.45 GHz Service licenses will be issued for 15-year, renewable license terms. Licensees may hold up to four 10-megahertz blocks (out of a total of ten) in the 3.45–3.55 GHz band within any PEA at any given time for the first four years after the close of the auction. A licensee in the 3.45–3.55 GHz band may provide any services permitted under terrestrial fixed or mobile, except aeronautical mobile, allocations, as set forth in the non-Federal Government column of the Table of Frequency Allocations in § 2.106 of the Commission's rules, as modified by the *3.45 GHz Second Report and Order,* FCC 21–32, adopted on March 17, 2021, and published elsewhere in this issue of the **Federal Register**.

4. Notwithstanding Commission resources described in the *Auction 110 Comment Public Notice,* each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the potential uses of a license that it may seek in Auction 110. In addition to the typical due diligence considerations that the Commission encourages of bidders in all auctions, the Commission calls particular attention in Auction 110 to the spectrum-sharing and relocation issues described in the *Auction 110 Comment Public Notice* and in the *3.45 GHz Second Report and Order.* Each applicant should closely follow releases from the Commission concerning these issues and consider carefully the technical and economic implications for commercial use of the 3.45–3.55 GHz band. The Commission makes no representations or warranties about the use of this spectrum for particular services, or about the information in Commission databases that is furnished by outside parties. Each applicant should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction. A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success.

A. Cooperative Sharing in the 3.45–3.55 GHz Band

5. The 3.45–3.55 GHz band, which is currently used by the Department of Defense (DoD) for high- and low-powered radar systems on fixed, mobile, shipborne, and airborne platforms, will operate using a cooperative sharing framework under which existing federal users are prohibited from causing harmful interference to non-federal operations, except in limited circumstances and in locations where current incumbent federal systems will remain in the band. Specifically, non-federal systems are not entitled to protection against harmful interference from federal operations (and limited restrictions may be placed on non-federal operations), under the following circumstances: (1) In ''Cooperative Planning Areas'' identified by the DoD in which it anticipates that federal operations will continue after the assignment of flexible use licenses in the band; and (2) in ''Periodic Use Areas'' that overlap with certain Cooperative Planning Areas, in which the DoD will need episodic access to all or a portion of the band in specific, limited geographic areas. Cooperative Planning Areas and Periodic Use Areas do not preclude commercial operations within their boundaries. Rather, incumbent federal operations and new flexible use operations must coordinate with each other to facilitate shared use of the band in these specified areas and during specified time periods as described in the *3.45 GHz Second Report and Order.*

B. Relocation of Secondary Non-Federal Radiolocation Operations

6. In addition to the federal users operating in the 3.45–3.55 GHz band, the 3.3–3.55 GHz band is currently used

by secondary non-federal radiolocation licensees that will be relocated to the 2.9–3.0 GHz band no later than 180 days after the flexible-use licenses won in Auction 110 are granted. In order to facilitate the speedy clearing of the 3.3–3.55 GHz band, the Commission has adopted in the *3.45 GHz Second Report and Order* a requirement that licensees in the new 3.45 GHz Service reimburse the current 3.3–3.55 licensees for their costs related to the relocation of their operations to the 2.9–3.0 GHz band. Auction 110 winning bidders will be required to pay these reimbursement costs in addition to their winning bid amounts. For additional information about cost-sharing and reimbursement procedures related to the licenses offered in Auction 110, potential bidders should carefully review the *3.45 GHz Second Report and Order.*

C. Commercial Spectrum Enhancement Act/Spectrum Act Requirements

7. The spectrum in the 3.45–3.55 GHz band is covered by a Congressional mandate that requires auction proceeds to be used to fund the estimated relocation or sharing costs of incumbent Federal entities. In 2004, the Commercial Spectrum Enhancement Act (CSEA) established a Spectrum Relocation Fund (SRF) to reimburse eligible Federal agencies operating on certain frequencies that have been reallocated from Federal to non-Federal use for the cost of relocating their operations.

8. In addition to requiring that specified auction proceeds be deposited in the SRF, the CSEA, as amended by the Spectrum Act, requires that the total cash proceeds from any auction of eligible frequencies must equal at least 110% of the estimated relocation or sharing costs provided to the Commission by the National Telecommunications and Information Administration (NTIA), and prohibits the Commission from concluding any auction of eligible frequencies that falls short of this amount. The Commission seeks comment on a proposed aggregate reserve price that will meet this statutory requirement, determined as discussed in Section III.F.

9. The NTIA provides the Commission its estimate of eligible Federal entities' relocation or sharing costs and the timelines for such relocation or sharing pursuant to the requirements of the CSEA. On January 14, 2021, NTIA provided to the Commission an estimate of $13,432,140,300 for the relocation or sharing costs of incumbent the incumbent Federal entities currently operating in the 3.45–3.55 GHz band.

III. Implementation of Part 1 Competitive Bidding Rules and Requirements

10. In the *3.45 GHz Second Report and Order,* the Commission decided to conduct any auction of new flexible-use licenses for the 3.45 GHz Service in conformity with the amended Part 1 competitive bidding rules. As part of the pre-bidding process for each auction, the Commission seeks comment on various procedures described in those rules, as mandated by section 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 309(j)(3)(E).

11. The Commission's part 1 rules require each applicant seeking to bid to acquire licenses in a spectrum auction to provide certain information in a short-form application (FCC Form 175), including ownership details and numerous certifications. Part 1, subpart Q's competitive bidding rules also contain a framework for the implementation of a competitive bidding design, application and certification procedures, reporting requirements, and the prohibition of certain communications. For auctions subject to the CSEA, such as Auction 110, the part 1 rules also require a reserve price or prices pursuant to which the total cash proceeds from any auction of eligible frequencies shall equal at least 110% of the total estimated relocation costs provided to the Commission by the NTIA.

A. Certification of Notice of Auction 110 Requirements and Procedures

12. In addition to the certifications already required under § 1.2105, the Commission proposes to require any applicant seeking to participate in Auction 110 to certify in its short-form application, under penalty of perjury, that it has read the public notice adopting procedures for the auction and that it has familiarized itself both with the auction procedures and with the requirements for obtaining a license and operating facilities in the 3.45–3.55 GHz band. The Commission believes that this requirement would help ensure that the applicant has reviewed the procedures for participation in the auction process and has investigated and evaluated those technical and marketplace factors that may have a bearing on its potential use of any licenses won at auction. Consequently, this requirement will promote an applicant's successful participation and will minimize its risk of defaulting on its auction obligations. As with other required certifications, an auction applicant's failure to make the required certification in its short-form application by the applicable filing deadline would render its application unacceptable for filing, and its application would be dismissed with prejudice. The Commission seeks comment on this proposal. Are there alternative procedures that could be implemented that would better ensure that an applicant has thoroughly reviewed the auction's procedures and considered all relevant factors that may affect its participation in the auction and use of any licenses for which it is the winning bidder?

B. Bidding Credit Caps

13. Consistent with the Commission's decisions in the *Updating Part 1 Report and Order,* 80 FR 5674, September 18, 2015, released July 21, 2015, the Commission seeks comment on establishing reasonable caps on the total amount of bidding credits that an eligible small business, very small business, or rural service provider may be awarded for Auction 110. The Commission administers its bidding credit programs to promote small business and rural service provider participation in auctions and in the provision of spectrum-based services.

14. Eligibility for the small business bidding credit is determined according to a tiered schedule of small business size definitions that are based on an applicant's average annual gross revenues for the relevant preceding period, and which determine the size of the bidding credit discount. In the *Updating Part 1 Report and Order,* the Commission revised the gross revenue thresholds that define the eligibility tiers for the small business bidding credit, and it adopted a rural service provider bidding credit program. In the *3.45 GHz Second Report and Order,* the Commission determined that eligibility for the small business bidding credit in the auction of licenses in the 3.45–3.55 GHz band would be defined using two of the thresholds of the standardized schedule of small business sizes. Specifically, an entity with average annual gross revenues for the preceding five years not exceeding $55 million will be designated as a ''small business'' eligible for a 15% bidding credit, and an entity with average annual gross revenues for the preceding five years not exceeding $20 million will be designated as a ''very small business'' eligible for a 25% bidding credit. Additionally, entities providing commercial communications services to a customer base of fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers in primarily rural areas will be eligible for the 15% rural service provider bidding credit.

15. To protect the integrity of the bidding credit program and to mitigate the incentives for abuse, the Commission, in the *Updating Part 1 Report and Order,* established a process to implement a reasonable cap on the total bidding credit amount that an eligible small business or rural service provider may be awarded in any auction, based on an evaluation of the expected capital requirements presented by the particular service and inventory of licenses being auctioned. The Commission determined that bidding credit caps would be implemented on an auction-by-auction basis, but resolved that, for any particular auction, the total amount of the bidding credit cap for small businesses would not be less than $25 million, and the bidding credit cap for rural service providers would not be less than $10 million. In each of its most recent spectrum auctions, the Commission adopted a $25 million cap on the total bidding credit amount that may be awarded to an eligible small business in each auction and a $10 million cap on rural service provider bidding credits in each auction.

16. The Commission proposes to adopt the same small business bidding credit caps for Auction 110. As in its most recent spectrum auctions, the Commission believes that the range of potential use cases suitable for spectrum in the 3.45–3.55 GHz band, combined with the relatively small geographic areas for new flexible-use licenses in the 3.45 GHz Service, may permit deployment of smaller scale networks with lower total costs. Moreover, recent auction data suggests that the proposed caps will allow the substantial majority of eligible small businesses in the auction to take advantage of the bidding credit program. The Commission therefore believes that the proposed caps will promote the statutory goals of providing meaningful opportunities for bona fide small businesses to compete in auctions and in the provision of spectrum-based services, without compromising the Commission's responsibility to prevent unjust enrichment and ensure efficient and intensive use of spectrum.

17. Similarly, the Commission proposes to adopt a $10 million cap on the total bidding credit amount that may be awarded to an eligible rural service provider in Auction 110. Based on prior experience with other spectrum auctions, the Commission anticipates that a $10 million cap on rural service provider bidding credits will not constrain the ability of any rural service provider to participate fully and fairly in Auction 110. In addition, to create parity in Auction 110 among eligible small businesses and rural service providers competing against each other in smaller markets, the Commission proposes a $10 million cap on the overall bidding credit amount that any winning small business bidder may apply to winning licenses in PEAs with populations of 500,000 or less.

18. The Commission seeks comment on these proposed caps. Specifically, do the expected capital requirements associated with operating in the 3.45–3.55 GHz band, the potential number and value of 3.45 GHz Service licenses, past auction data, or any other considerations justify a higher cap for either type of bidding credit? Moreover, are there convincing reasons for not maintaining parity with the bidding credit caps in other recent spectrum auctions? Commenters are encouraged to identify unique circumstances and characteristics of this mid-band auction that should guide us in establishing alternative bidding credit caps, and to provide specific, data-driven arguments in support of their proposals.

19. The Commission reminds applicants applying for designated entity bidding credits that they should take due account of the requirements of the Commission's rules and implementing orders regarding de jure and de facto control of such applicants. These rules include a prohibition, which applies to all applicants (regardless of whether they seek bidding credits), against changes in ownership of the applicant that would constitute an assignment or transfer of control. Applicants should not expect to receive any opportunities to revise their ownership structure after the filing of their short- and long-form applications, including making revisions to their agreements or other arrangements with interest holders, lenders, or others in order to address potential concerns relating to compliance with the designated entity bidding credit requirements. This policy will help to ensure compliance with the Commission's rules applicable to the award of bidding credits prior to the start of bidding in this auction, which will involve competing bids from those who do and do not seek bidding credits, and thus preserves the integrity of the auction process. The Commission also believes that this will meet its objectives in awarding licenses through the competitive bidding process.

C. Prohibition of Certain Communications

20. The Commission's part 1 rules require each applicant seeking to bid to acquire licenses in a spectrum auction to provide certain information in a short-form application (FCC Form 175). Section 1.2105(c)(1) of the Commission's rules provides that, subject to specified exceptions, after the short-form application filing deadline, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider of communications services that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline. This prohibition applies until after the deadline for winning bidders to submit down payment.

21. The operation of the rule prohibiting certain communications requires that the Commission identify nationwide providers in connection with each auction. Because the applicable service rules for the 3.45–3.55 GHz band will allow a licensee to provide flexible terrestrial wireless services, including mobile services, the Commission's identification of three nationwide providers in the *Communications Marketplace Report* suggests that the Commission should identify those same entities as nationwide providers for purposes of 3.45 GHz licenses and Auction 110. Accordingly, consistent with the procedures adopted for prior auctions of flexible-use licenses for advanced wireless services, the Commission proposes to identify AT&T, T-Mobile, and Verizon Wireless as ''nationwide providers'' for the purpose of implementing the competitive bidding rules in Auction 110, including § 1.2105(c), the rule prohibiting certain communications. The Commission seeks comment on this proposal. Commenters that disagree with this designation of nationwide providers are encouraged to articulate alternative methodologies by which the Commission should identify nationwide providers for purposes of the prohibited communications rule.

D. Information Procedures During the Auction Process

22. As an additional safeguard to further prevent the sharing of information about applicants' bids and bidding strategies and to discourage unproductive and anti-competitive strategic behavior, the Commission proposes to limit information available

in Auction 110 in order to prevent the identification of bidders placing particular bids until after the bidding has closed. While the Commission generally makes available to the public information provided in each applicant's FCC Form 175 following an initial review by Commission staff, the Commission proposes to not make public until after bidding has closed: (1) The PEAs that an applicant selects for bidding in its short-form application (FCC Form 175), (2) the amount of any upfront payment made by or on behalf of an applicant for Auction 110, (3) any applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid.

23. As in past Commission auctions, the Commission would not make public during a bidding round any real-time information on bidding activity. Bidders would have access both during and after a round to additional information related to their own bidding and bid eligibility. For example, bidders would be able to view their own level of eligibility before and during the auction through the FCC auction bidding system.

24. After the close of bidding, bidders' PEA selections, upfront payment amounts, bidding eligibility, bids, and other bidding-related information would be made publicly available.

25. The Commission seeks comment on the details of the proposal for implementing limited information procedures, or anonymous bidding, in Auction 110. Commenters opposing the use of limited information procedures in Auction 110 should explain their reasoning and propose alternative information rules.

E. Upfront Payments and Bidding Eligibility

26. In keeping with the Commission's usual practice in spectrum license auctions, the Commission proposes that applicants be required to submit upfront payments as a prerequisite to becoming qualified to bid. The upfront payment is a refundable deposit made by an applicant to establish its eligibility to bid on licenses. Upfront payments protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding. With these considerations in mind, the Commission proposes to calculate upfront payments based on bandwidth and license area population using a tiered approach under which the calculation will vary by market population. The Commission proposes upfront payments for a block in a PEA based on $0.03 per MHz-pop for PEAs 1–50 and $0.01 per MHz-pop for all other PEAs, subject to a minimum of $500. The proposed upfront payments equal approximately half the proposed minimum opening bids, which are established as described in Section IV.A.7. The Commission seeks comment on these upfront payment amounts, which are specified in the Attachment A file on the Auction 110 website at *https://www.fcc.gov/auction/110.* If commenters believe that these upfront payment amounts are not reasonable amounts, they should explain their reasoning and suggest an alternative approach. For example, if a commenter believes that opening bids should be lower in PEAs that are largely covered by a Cooperative Planning Area or Periodic Use Area, it should explain how those upfront payments should be adjusted.

27. The Commission proposes to assign each generic spectrum block in a given PEA a specific number of bidding units, equal to one bidding unit per $100 of the upfront payment listed in Attachment A to the *Auction 110 Comment Public Notice.* The number of bidding units for one block in a given PEA is fixed, since it is based on the MHz-pops in the block, and it does not change during the auction as prices change. Bidding units are used to measure bidder eligibility and bidding activity. The Commission further proposes that the amount of the upfront payment submitted by a bidder would determine its initial bidding eligibility in bidding units. Accordingly, a bidder that makes an upfront payment of $1,000 would have initial eligibility of 10 bidding units. To the extent that bidders wish to bid on multiple generic blocks simultaneously, whether within the same PEA or in different PEAs, they would need to ensure that their upfront payment provides enough eligibility to cover multiple blocks.

28. Under the proposed approach, a bidder's upfront payment would not be attributed to blocks in a specific PEA or PEAs, or to a particular category of blocks. A bidder may place bids on multiple blocks in PEAs consistent with its selections in its FCC Form 175, provided that the total number of bidding units associated with those blocks does not exceed its bidding eligibility. A bidder cannot increase its eligibility during the auction; it can only maintain its eligibility or decrease its eligibility. Thus, in calculating its upfront payment amount, and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid in any single round and submit an upfront payment amount covering that total number of bidding units. The Commission seeks comment on these proposals. Commenters are encouraged to identify unique circumstances and characteristics of this mid-band auction that should guide us in establishing procedures for determining bidding eligibility, and to provide specific, data-driven arguments in support of their proposals.

F. Aggregate Reserve Pursuant to CSEA

29. Auction 110 is subject to the CSEA's requirement that the total cash proceeds from the auction equal at least 110% of the estimated relocation or sharing costs provided to the Commission by the NTIA. The Commission's rules require that this statutory requirement be met by establishing a reserve price. NTIA has estimated that the relocation or sharing costs for eligible Federal entities assigned to frequencies in the 3.45–3.55 GHz band will be $13,432,140,300. The Commission proposes to establish a single aggregate reserve price for the auction to ensure that total cash proceeds from the auction equal at least $14,775,354,330.

30. The Commission proposes procedures that have been used in past Commission auctions to determine whether the reserve price is met in Auction 110. Total cash proceeds from Auction 110 will not be self-evident from the bidding prior to the conclusion of the auction. As in many services, the Commission established bidding credits for small business and rural service providers. Winning bidders claiming such credits may pay less than the amount of their winning bids for any licenses won. In the *CSEA/Part 1 Report and Order,* 71 FR 6214, February 7, 2006, released January 24, 2006, the Commission determined that ''total cash proceeds'' for purposes of meeting the CSEA's requirement means winning bids net of any applicable bidding credit discounts at the end of bidding. Thus, whether the CSEA's total cash proceeds requirement has been met depends on whether winning bids, net of any applicable bidding credit discounts, equal, in aggregate, at least 110% of estimated relocation costs.

31. As a preliminary matter, as in prior Commission auctions, the Commission proposes to assess whether the reserve price is met—whether the auction will generate sufficient total cash proceeds—based on bids in the clock phase of the auction and not the assignment phase. Total cash proceeds from assignment phase payments are expected to be small relative to those from the clock phase and therefore less

likely to contribute significantly to meeting the reserve price. Given the proposal that assignment phase payments will be determined using a second-price rule, an individual bidder will have little ability to boost net winning bids in the assignment phase in order to meet the reserve price. The Commission does not wish to require bidders or Commission staff to invest the additional time in the assignment phase if ultimately no licenses will be assigned.

32. Whether winning bidders in the clock phase claim any bidding credits that may reduce total cash proceeds to less than gross winning bids only can be determined with certainty at the close of the clock phase of bidding. However, the Commission will estimate whether the reserve is met during the clock phase by assuming conservatively that for a category in a PEA with excess demand, blocks will be won by the bidders with the highest bidding credit percentages, to the extent that such bidders still demand blocks in that category in that PEA. In order to make bidders aware of whether the reserve is likely to be met while they are still bidding in the clock phase, the Commission proposes to indicate on the Public Reporting System (PRS) whether estimated total cash proceeds based on the bids in the most recently completed round would satisfy the reserve. The Commission proposes further to make available only to bidders information on the shortfall between the reserve and the estimated total cash proceeds, rounded to the nearest $1,000.

33. This proposal should avoid a potential situation where the reserve price is assumed to be met, but, when bidding credits are considered, final net winning bids later prove insufficient. For a category in a PEA without excess demand, the requirement will be evaluated based on a true calculation of net revenue after bid processing, rather than on the estimate, since information on how to apply bidding credits precisely will be available in that case.

34. The Commission seeks comment on the proposed aggregate reserve price and proposed procedures for determining whether it is met. The Commission believes that the procedures proposed in the Public Notice are the best way to reduce the risk that the reserve price will not be met, but seeks comment on whether there are other mechanisms that could be used, either in place of or as a supplement to the proposed procedures, that may further reduce that risk. Commenters proposing any alternatives should explain how their proposal complies with the requirements under the CSEA and the Commission's part 1 rules.

G. Auction Delay, Suspension, or Cancellation

35. For Auction 110, the Commission proposes that, at any time before or during the bidding process, the Office of Economics and Analytics (OEA), in conjunction with the Wireless Telecommunications Bureau (WTB), may delay, suspend, or cancel bidding in Auction 110 in the event of a natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such a case, OEA would notify participants of any such delay, suspension, or cancellation by public notice and/or through the FCC auction bidding system's announcement function. If the bidding is delayed or suspended, OEA, in its sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or it may cancel the auction in its entirety. The Commission emphasizes that OEA and WTB would exercise the delegated authority to delay, suspend, or cancel bidding in Auction 110 solely at their discretion. The Commission seeks comment on this proposal.

H. Deficiency Payments and Additional Default Payment Percentage

36. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.,* fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make full and timely final payment, or is otherwise disqualified) is liable for a default payment under § 1.2104(g)(2) of the rules. This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

37. The Commission's rules provide that, in advance of each auction, it will establish a percentage between 3% and 20% of the applicable winning bid to be assessed as an additional default payment. As the Commission has indicated, the level of this additional payment in each auction will be based on the nature of the service and the licenses being offered.

38. For Auction 110, the Commission proposes to establish an additional default payment of 15%, which is consistent with that adopted for recent spectrum auctions, including Auctions 101, 102, 103, and 107. As noted in the *CSEA/Part 1 Report and Order,* defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional default payment of up to 20% will be more effective in deterring defaults than the 3% used in some earlier auctions. Based on experience from recent spectrum auctions that have also made available PEA-based licenses, the Commission does not believe the detrimental effects of any defaults in Auction 110 are likely to be unusually great. In light of these considerations, the Commission proposes for Auction 110 an additional default payment of 15% of the relevant bid. The Commission seeks comment on this proposal. Commenters are encouraged to identify unique circumstances and characteristics of the licenses made available for bidding in this auction that should guide us in establishing an alternative default payment, and to provide specific, data-driven arguments in support of their proposals.

39. In case they are needed for post-auction administrative purposes, such as default or unjust enrichment payments on specific licenses, the bidding system will calculate individual per-license prices that are separate from the final auction payments that are calculated on an aggregate basis. The bidding system will apportion to individual licenses any assignment phase payments and any capped bidding credit discounts, since in both cases, a single amount may apply to multiple licenses.

IV. Proposed Bidding Procedures

40. The Commission proposes to conduct Auction 110 using an ascending clock auction design. Under the proposed auction format, bidding would take place in two phases. The first phase of the auction—the clock phase—would consist of successive clock bidding rounds in which bidders indicate their demands for categories of generic license blocks in specific PEAs, followed by a second phase—the assignment phase—with bidding for frequency-specific license assignments. The Commission seeks comment on bidding procedures for the two phases of Auction 110.

41. A technical guide, is available on the Auction 110 website, supplementing the information in the *Auction 110 Comment Public Notice* and including

the mathematical details and algorithms of the proposed auction design.

A. Clock Phase

1. Clock Auction Design

42. During the clock phase of Auction 110, bidders will indicate their demands for generic license blocks in a bidding category in specific geographic areas—in this case, PEAs. There may be one or two bidding categories in a given PEA. The proposed clock auction format would proceed in a series of rounds, with bidding being conducted simultaneously for all spectrum blocks in all PEAs available in the auction. During each bidding round, the bidding system would announce a per-block clock price for each category in each PEA, and qualified bidders would submit, for each category and PEA for which they wish to bid, the number of blocks they seek at the clock prices associated with the current round. Bidding rounds would be open for predetermined periods of time. Bidders would be subject to activity and eligibility rules that govern the pace at which they participate in the auction.

43. Under the proposal, for each product—a category in a PEA—the clock price for a generic license block would increase from round to round if bidders indicate total demand for blocks in that product that exceeds the number of blocks available. The bidding rounds would continue until, for all products, the total number of blocks that bidders demand does not exceed the supply of available blocks.

44. If the aggregate reserve price to satisfy the CSEA has been met at the time that the clock phase bidding stops, those bidders indicating demand for a product at the final clock phase price would be deemed winning bidders, and the auction will proceed to the assignment phase. If the reserve price has not been satisfied at the time bidding stops in the clock phase, the auction will end, and no licenses will be assigned.

45. Following the clock phase, if the reserve price has been met, the assignment phase will offer clock phase winners the opportunity to bid an additional amount for licenses with specific frequencies. All winning bidders, regardless of whether they bid in the assignment phase, will be assigned licenses for contiguous blocks within a category in a PEA.

46. The Commission seeks comment on specific procedures to implement this ascending clock auction and on alternative procedures for conducting, in a timely manner, an auction of 3.45–3.55 GHz licenses.

2. Generic License Blocks in Two Bidding Categories

47. Pursuant to the *3.45 GHz Second Report and Order,* the 3.45–3.55 GHz band will be reconfigured and licensed in uniform 10-megahertz sub-blocks in each of the 406 PEAs in the contiguous United States. In most PEAs, new licensees generally will have unrestricted use of all ten frequency blocks. In other areas, specifically in PEAs that wholly or in part cover Cooperative Planning Areas or Periodic Use Areas, licensees must coordinate with incumbent federal operations in the band, as established in the *3.45 GHz Second Report and Order.* In some of the PEAs where coordination is required, all ten blocks will be subject to the same restrictions. In others, the restrictions may vary depending upon the frequency block—specifically, in some PEAs, the A through D blocks may be subject to different restrictions than the E through J blocks.

48. *Categories.* The Commission proposes to establish categories for bidding such that all the blocks within a category in a PEA are similar in terms of any requirements or restrictions. Therefore, the Commission proposes bidding categories as follows: In the PEAs where all ten blocks are the same—*i.e.,* all ten generally are unrestricted or all five are subject to the same restrictions—the ten generic blocks will be considered Category 1, or ''Cat1,'' blocks. In the PEAs where the restrictions differ according to the frequency, the A through D blocks will be considered Category 1, or ''Cat1,'' while the E through J blocks will be considered Category 2, or ''Cat2,'' blocks for bidding. Accordingly, in 334 PEAs, there will be ten generic blocks of a single Cat1 product and in 72 PEAs, there will be two products, with four generic blocks of Cat1 and six generic blocks of Cat2. In PEAs with two categories, the Commission designates the A through D blocks as Cat1 and the E through J blocks as Cat2, simply to denote that for these licenses the coordination requirements in a PEA differ between the A through D blocks compared to the E through J blocks. For all licenses, the Commission cautions potential bidders to investigate carefully the restrictions that may apply to a given PEA. In particular, the Commission notes that prior to the start of bidding, the DoD will disseminate one or more workbooks that specifically describe the coordination requirements for each Cooperative Planning Area and Periodic Use Area. The Commission will issue a Public Notice when such workbook(s) or any updates are available.

49. The proposed approach to determine bidding categories differs somewhat from the approach the Commission has taken in prior clock auctions, in that the coordination requirements on blocks in a given category in a given PEA may differ from the requirements on the same category of blocks in a different PEA. For example, the Cat1 blocks in one PEA may be unrestricted while the Cat1 blocks in another PEA may require some degree of coordination. Similarly, the restrictions on Cat2 blocks in one PEA will likely vary from PEA to PEA. In previous auctions, blocks in a given bidding category generally have been subject to the same use requirements in all PEAs, but because the restrictions in this auction differ so widely from PEA to PEA, that approach is not feasible. Importantly, however, under this proposal for Auction 110, within any given PEA, the blocks within a category can be considered generic, and bidding in the clock phase would determine a single price that would apply to each generic block in a category in a PEA. The Commission seeks comment on this proposal for determining categories of generic blocks for bidding.

50. The proposal for bidding on generic blocks in two categories is based on the close similarity of the blocks within each bidding category within a PEA. To the extent a bidder has a preference for licenses for specific frequencies, the Commission proposes to allow the bidder to bid for its preferred blocks in the assignment phase. However, a bidder for a generic block would not be assured that it will be assigned, or not be assigned, any particular frequency block. The Commission seeks comment on this approach, which it believes will promote the efficient management of the auction.

51. *Limit on number of blocks per bidder.* In the *3.45 GHz Second Report and Order,* the Commission adopted a spectrum aggregation limit for flexible-use licenses in the 3.45 GHz band of a maximum of 40 megahertz (*i.e.,* four blocks out of ten) in any PEA at any point in time for four years post-auction. Consistent with this limit on the number of blocks that a single entity can hold in any single PEA, the bidding system will limit to four the number of blocks that a bidder can demand in any given PEA at any point in the auction. Therefore, in each bidding round, a bidder would have the opportunity to bid for a total of up to four blocks of spectrum per PEA. This spectrum aggregation limit would apply across

both categories in PEAs that contain Cat1 and Cat2 blocks. As a result, no single entity would be permitted to bid on, for example, two Cat1 block and three Cat2 blocks within a single PEA. An aggregation limit of four blocks would further the Commission's interest in promoting greater diversity in participation in the 3.45 GHz band by ensuring that, if licenses for all blocks in a PEA are awarded, there will be at least three winning bidders in the PEA.

3. Bidding Rounds

52. Under the proposed clock auction format, Auction 110 would consist of sequential bidding rounds, each followed by the release of round results. The Commission proposes to conduct bidding simultaneously for all spectrum blocks in both bidding categories for all PEAs available in the auction. In the first bidding round of Auction 110, a bidder would indicate, for each product, how many generic license blocks it demands at the minimum opening bid price. During each subsequent bidding round, the bidding system would announce a per-block clock price for each product, and qualified bidders would submit, for each product for which they wish to bid, the number of blocks they seek at the clock prices associated with the current round. Bidding rounds would be open for predetermined periods of time. Bidders would be subject to activity and eligibility rules that govern the pace at which they participate in the auction.

53. For each product, the clock price for a generic license block would increase from round to round if bidders indicate total demand for that product that exceeds the number of blocks available. The bidding rounds would continue until, for every product, the total number of blocks that bidders demand does not exceed the supply of available blocks. At that point, those bidders indicating demand for a block at the final price would be deemed winning bidders.

54. The initial bidding schedule would be announced in a public notice to be released at least one week before the start of bidding. Under this proposal, OEA would retain the discretion to adjust the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Such adjustments may include changes in the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, and would depend upon bidding activity and other factors. The Commission seeks comment on this proposal. Commenters should address the role of the bidding schedule in managing the pace of the auction and should specifically discuss the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirement percentage or the bid increment percentage, or by using other means.

55. The Commission proposes to conduct Auction 110 over the internet. A bidder would be able to submit its bids using the bidding system's upload function, which allows bid files in a comma-separated values (CSV) text format to be uploaded. The bidding system would not allow bids to be submitted unless the bidder selected the PEAs on its FCC Form 175 and the bidder has sufficient bidding eligibility.

56. During each round of the bidding, a bidder would also be able to remove bids placed in the current bidding round. If a bidder modifies its bids for blocks in a PEA in a round, the system would take the last bid submission as that bidder's bid for the round.

4. Stopping Rule

57. The Commission proposes a simultaneous stopping rule for Auction 110, under which all blocks in all PEAs would remain available for bidding until the bidding stops in every PEA. Specifically, the Commission proposes that bidding close for all blocks after the first round in which there is no excess demand in any product. Excess demand is calculated as the difference between the number of blocks of aggregate demand and supply. Consequently, under this approach, it is not possible to determine in advance how long Auction 110 would last. The Commission seeks comment on the proposed simultaneous stopping rule.

5. Availability of Bidding Information

58. The Commission proposes to make public after each round of Auction 110, for each category in each PEA: The supply, the aggregate demand, the posted price of the last completed round, and the clock price for the next round. The posted price of the previous round is, generally, the start-of-round price if supply exceeds demand; the clock price of the previous round if demand exceeds supply; or the price at which a reduction caused demand to equal supply. The identities of bidders demanding blocks in a specific category or PEA would not be disclosed until after Auction 110 concludes (*i.e.,* after the close of bidding).

59. Under this proposal, each bidder would have access to additional information related to its own bidding and bid eligibility. Specifically, after the bids of a round have been processed, the bidding system would inform each bidder of the number of blocks it holds after the round (its processed demand) for every product and its eligibility for the next round.

60. Limiting the availability of bidding information during the auction balances the Commission's interest in providing bidders with sufficient information about the status of their own bids and the general level of bidding in all areas and license categories to allow them to bid confidently and effectively, while restricting the availability of information that may facilitate identification of bidders placing particular bids, which could potentially lead to undesirable strategic bidding.

6. Activity Rule, Contingent Bidding Limit, and Reducing Eligibility

61. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. For this clock auction, a bidder's activity in a round for purposes of the activity rule would be the sum of the bidding units associated with the bidder's demands as applied by the auction system during bid processing. Bidders are required to be active on a specific percentage (the activity requirement percentage) of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level would result in a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in subsequent rounds of the auction.

62. The Commission proposes to require that bidders maintain a fixed, high level of activity in each round of Auction 110 in order to maintain bidding eligibility. Specifically, the Commission proposes to require that bidders be active on between 90% and 100% of their bidding eligibility in all clock rounds, with the specific percentage within this range to be set for each round. Thus, the activity rule would be satisfied when a bidder has bidding activity on blocks with bidding units that total 90% to 100% of its current eligibility in the round. The Commission proposes to set the activity requirement percentage initially at 95%. If the activity rule is met, then the bidder's eligibility would not change for the next round. If the activity rule is not met in a round, the bidder's eligibility would be reduced. The Commission proposes to calculate bidding activity based on the bids that are applied by the

FCC auction bidding system. That is, if a bidder requests a reduction in the quantity of blocks it demands in a product, but the FCC auction bidding system cannot apply the request because demand would fall below the available supply, then the bidder's activity would reflect its unreduced demand. Under the ascending clock auction format, the FCC auction bidding system will not allow a bidder to reduce the quantity of blocks it demands in an individual product if the reduction would result in aggregate demand falling below (or further below) the available supply of blocks in the product.

63. Because a bidder's eligibility for the next round is calculated based on the bidder's demands as applied by the auction system during bid processing, a bidder's eligibility may be reduced even if the bidder submitted bids with activity that exceeds the required activity for the round. This may occur, for example, if the bidder bids to reduce its demand in PEA X by two blocks (with 10 bidding units each) and bids to increase its demand by one block (with 20 bidding units) in PEA Y. If the bidder's demand can only be reduced by one block in PEA X (because there is only one block of excess demand), the increase in PEA Y cannot be applied, and absent other bidding activity the bidder's eligibility would be reduced. To potentially help a bidder avoid having its eligibility reduced as a result of submitted bids that could not be accepted during bid processing, the Commission seeks comment on additional procedures that would allow a bidder to submit bids with associated bidding activity greater than its current bidding eligibility. For example, depending upon the bidder's overall bidding eligibility and the contingent bidding percentage, a bidder could submit an ''additional'' bid or bids that would be considered (in price point order with its other bids) and applied as available eligibility permits during the bid processing. However, even under these additional procedures, the bidder's activity as applied by the auction system during bid processing would not exceed the bidder's current bidding eligibility. That is, if a bidder were allowed to submit bids with associated bidding units exceeding 100% of its current bidding eligibility, its processed activity would never exceed its eligibility.

64. Specifically, the Commission seeks comment on procedures by which, after Round 1, a bidder may submit bids with bidding units totaling up to a contingent bidding limit equal to the bidder's current bidding eligibility for the round times a percentage (the contingent bidding percentage) equal to or greater than 100%. The Commission seeks comment on setting an initial contingent bidding percentage of 120%, which would apply beginning in Round 2. This limit would be subject to change in subsequent rounds within a range of 100% to 140%. In any bidding round, the auction bidding system would advise the bidder of its current bidding eligibility, its required bidding activity, and its contingent bidding limit.

65. Under the proposed procedures, OEA would retain the discretion to change the activity requirement percentage during the auction, and the Commission seeks comment in connection with potential additional procedures on whether OEA should similarly retain the discretion to change the contingent bidding percentage during the auction. The bidding system would announce any such changes in advance of the round in which they would take effect, giving bidders adequate notice to adjust their bidding strategies.

66. The Commission invites comment on this activity rule proposal and further seeks comment on using a contingent bidding limit to address the potential for loss of bidding eligibility under some circumstances. The Commission also encourages commenters to address whether it should set the activity requirement percentage between 90% and 100% for each round and, should the Commission adopt a contingent bidding limit, whether to set the contingent bidding percentage between 100% and 140%. Further, the Commission seeks comment on where to set these percentages initially. The Commission also seeks comment on the relationship between the proposed activity rules and the ability of bidders to switch their demands across PEAs. The Commission encourages any commenters that oppose the proposed range for the activity requirement percentage and the described contingent bidding percentage range to explain their reasons with specificity.

67. *Missing bids.* The Commission points out that under the proposed clock auction format, bidders are required to indicate their demands in every round, even if their demands at the new round's prices are unchanged from the previous round. Missing bids—bids that are not reconfirmed—are treated by the auction bidding system as requests to reduce to a quantity of zero blocks for the product. If these requests are applied, or applied partially, then a bidder's bidding activity, and its bidding eligibility for the next round, may be reduced.

68. For Auction 110, the Commission does not propose to provide for activity rule waivers to preserve a bidder's eligibility. The Commission notes that the proposal to permit a bidder to submit bids with bidding activity greater than its eligibility, within the precise limits set forth above, would address some of the circumstances under which a bidder risks losing bidding eligibility and otherwise could wish to use a bidding activity waiver, while minimizing any potential adverse impacts on bidder incentives to bid sincerely and on the price setting mechanism of the clock auction. This approach not to allow waivers is consistent with the ascending clock auction procedures used in other FCC clock auctions. The clock auction relies on precisely identifying the point at which demand decreases to equal supply to determine winning bidders and final prices. Allowing waivers would create uncertainty with respect to the exact level of bidder demand and would interfere with the basic clock price-setting and winner determination mechanism. Moreover, uncertainty about the level of demand would affect the way bidders' requests to reduce demand are processed by the bidding system. The Commission seeks comment on this approach.

7. Acceptable Bids

a. Minimum Opening Bids

69. The Commission proposes to establish minimum opening bid amounts for Auction 110. The bidding system will not accept bids lower than these amounts. Based on the Commission's experience in past auctions, setting minimum opening bid amounts judiciously is an effective tool for accelerating the competitive bidding process. For Auction 110, the Commission proposes to establish initial clock prices, or minimum opening bids, by PEA.

70. For Auction 110, the Commission proposes to calculate minimum opening bid amounts based on bandwidth and license area population, which is similar to its approach in previous spectrum auctions, using a tiered approach under which the calculation will vary by market population. The Commission proposes minimum opening bid amounts for a block in a PEA based on $0.06 per MHz-pop for PEAs 1–50 and $0.02 per MHz-pop for all other PEAs, subject to a minimum of $1,000. The Commission seeks comment on these minimum opening bid amounts, which are specified in Attachment A to the *Auction 110 Comment Public Notice.* If commenters

believe that these minimum opening bid amounts would result in unsold licenses or are not reasonable amounts, they should explain their reasoning and propose an alternative approach. For example, if a commenter believes that opening bids should be lower in PEAs that are largely covered by a Cooperative Planning Area or Periodic Use Area, it should explain how those bids should be adjusted. Commenters should support their claims with valuation analyses and suggested amounts or formulas for minimum opening bids.

71. In establishing minimum opening bid amounts, the Commission particularly seeks comment on factors that could reasonably affect bidders' valuation of the spectrum, including the type of service offered, market size, population covered by the proposed facility, whether there is significant overlap with a Cooperative Planning Area or Periodic Use Area, and any other relevant factors.

72. Commenters may also wish to address the general role of minimum opening bids in managing the pace of the auction. For example, commenters could compare using minimum opening bids—*e.g.,* by setting higher minimum opening bids to reduce the number of rounds it takes licenses to reach their final prices—to other means of controlling auction pace, such as changing the bidding schedule, the activity requirement percentage, or the bid increment percentage.

b. Clock Price Increments

73. Under the proposed clock phase procedures for Auction 110, after bidding in the first round and before each subsequent round, the FCC auction bidding system would announce the start-of-round price and the clock price for the upcoming round—that is, the lowest price and the highest price at which bidders can specify the number of blocks they demand during the round. As long as aggregate demand for blocks in the product exceeds the supply of blocks, the start-of-round price would be equal to the clock price from the prior round. If demand equaled supply at a price in a previous round, then the start-of-round price for the next round would be equal to the price at which demand equaled supply. If demand was less than supply in the previous round, then the start-of-round price for the next round would not increase.

74. The Commission proposes to set the clock price for blocks in a specific product for a round by adding a percentage increment to the start-of-round price. For example, if the start-of-round price for a block in a given product is $10,000, and the percentage increment is 20%, then the clock price for the round will be $12,000. The result of the clock price calculation will be rounded up to the nearest $1,000 for results above $10,000 and rounded up to the nearest $100 for results below $10,000.

75. The Commission proposes to set the increment percentage within a range of 5% to 20% inclusive, to set the initial increment percentage at 10%, and potentially to adjust the increment as rounds continue. The Commission further proposes that the total dollar amount of the increment (the difference between the clock price and the start-of-round price) would not exceed a certain amount. The Commission proposes to set this cap on the increment initially at $50 million and potentially to adjust the cap as rounds continue. The proposed 5% to 20% increment range and cap will allow us to set a percentage that manages the auction pace and takes into account bidders' needs to evaluate their bidding strategies while moving the auction along quickly.

76. The Commission seeks comment on these proposed procedures.

c. Intra-Round Bids

77. The Commission proposes generally to permit a bidder to make intra-round bids by indicating a point between the start-of-round price and the clock price at which its demand for blocks changes. In placing an intra-round bid, a bidder would indicate a specific price and a quantity of blocks it demands if the price for blocks should increase beyond that price. For example, if a bidder has processed demand of two blocks at the start of the round price of $200, but wishes to hold only one block if the price increases by more than $10 (assuming the bid increment is more than $10), the bidder will indicate a bid quantity of two at a price of $210 ($200 + $10). Similarly, if the bidder wishes to reduce its demand to zero if the price increases at all above $200, the bidder will indicate a bid quantity of zero at the start-of-round price of $200.

78. Intra-round bids would be optional; a bidder may choose to express its demands only at the clock prices. This proposal to permit intra-round bidding would allow the auction system to use relatively large increments, thereby speeding the auction, without running the risk that a jump in the clock price will overshoot the market clearing price—the point at which demand for blocks equals the available supply. The Commission seeks comment on the proposal to allow intra-round bids.

8. Bids To Change Demand, Bid Types, and Bid Processing

79. Under the ascending clock auction format the Commission proposes for Auction 110, a bidder would indicate in each round the number of blocks in each product that it demands at a given price, subject to the discussed in-band limit of four blocks. A bidder that wishes to change the quantity it demands (relative to its demands from the previous round as processed by the bidding system) would express its demands at the clock price or at an intra-round price. A bidder that is willing to maintain the same demand in a product at the new clock price would bid for that quantity at the clock price, indicating that it is willing to pay up to that price, if need be, for the specified quantity. Bids to maintain demand would always be applied by the auction bidding system.

80. In order to facilitate bidding for multiple blocks in a PEA, the Commission proposes that bidders will be permitted to make two types of bids: Simple bids and switch bids. A ''simple'' bid indicates a desired quantity of blocks in a product at a price (either the clock price or an intra-round price). A ''switch'' bid allows the bidder to request to move its demand for a quantity of blocks from Cat1 to Cat2, or vice versa, within the same PEA at a price for the ''from'' category (either the clock price or an intra-round price). ''Switch'' bids are allowed only in PEAs with two categories.

81. The Commission does not propose to incorporate any form of package bidding procedures into the clock phase of Auction 110. Package bidding would add complexity to the bidding process, and the Commission does not see significant benefit from such procedures, given the clock auction and assignment phase format proposed in the *Auction 110 Comment Public Notice.* A bidder may bid on multiple blocks in a PEA and in multiple PEAs. The Commission proposes that the assignment phase will assign contiguous blocks to winners of multiple blocks in a category in a PEA and give bidders an opportunity to express their preferences for specific frequency blocks, thereby facilitating aggregations of licenses.

82. The Commission proposes bid processing procedures that the auction bidding system would use, after each bidding round, to process bids to change demand to determine the processed demand of each bidder for each product and a posted price for each product that would serve as the start-of-round price for the next round.

a. No Excess Supply Rule for Bids To Reduce Demand

83. Under the ascending clock auction format, the FCC auction bidding system will not allow a bidder to reduce the quantity of blocks it demands in a product if the reduction would result in aggregate demand falling below (or further below) the available supply of blocks in the product. Therefore, if a bidder submits a simple bid to reduce the number of blocks for which it has processed demand as of the previous round, the FCC auction bidding system will treat the bid as a request to reduce demand that will be applied only if the ''no excess supply'' rule would be satisfied. Similarly, if a bidder submits a switch bid to move its demand for a quantity of blocks from Cat1 to Cat2 within the same PEA, the FCC auction bidding system will treat the bid as a request that will be applied only if the ''no excess supply'' rule would be satisfied for Cat1 in the PEA.

b. Eligibility Rule for Bids To Increase Demand

84. The bidding system will not allow a bidder to increase the quantity of blocks it demands in a product if the total number of bidding units associated with the bidder's demand exceeds the bidder's bidding eligibility for the round. Therefore, if a bidder submits a simple bid to increase the number of blocks for which it has processed demand as of the previous round, the FCC auction bidding system will treat the bid as a request to increase demand that will be applied only if that would not cause the bidder's activity to exceed its eligibility. The eligibility rule for bids to increase demand does not apply to switch bids because the bidder's processed activity does not change when a switch bid is applied.

c. Partial Application of Bids

85. Under the proposed bid processing procedures and as in all previous FCC spectrum auctions using the clock auction format, a bid (simple bid or switch bid) that involves a reduction from the bidder's previous demands could be applied partially—that is, reduced by fewer blocks than requested in the bid—if excess demand is insufficient to support the entire reduction. Accordingly, the bidding system will apply a bidder's request to reduce demand as much as possible consistent with the no excess supply rule. A switch bid may be applied partially, but the increase in demand in the ''to'' category will always match in quantity the reduction in the ''from'' category. A simple bid to increase a bidder's demand could be applied partially if the total number of bidding units associated with the bidder's demand exceeds the bidder's bidding eligibility for the round. Therefore, the bidding system will accommodate a bidder's request to increase demand as much as possible as long as the bidder's activity does not exceed its eligibility.

d. Processed Demand

86. The Commission proposes to process bids to change demand in order of price point after a round ends, where the price point represents the percentage of the bidding interval for the round. For example, if the start-of-round price is $5,000 and the clock price is $6,000, a price of $5,100 will correspond to the 10% price point, since it is 10% of the bidding interval between $5,000 and $6,000. Under this proposal, the FCC auction bidding system would process bids to change demand in ascending order of price point, first considering intra-round bids in order of price point and then bids at the clock price. The system would consider bids at the lowest price point across all PEAs, then look at bids at the next price point in all areas, and so on. The Commission proposes that, if there are multiple bids at a single price point, the system will process bids in order of a bid-specific pseudo-random number. As it considers each submitted bid during bid processing, the FCC auction bidding system would determine the extent to which there is excess demand in each PEA at that point in the processing in order to determine whether a bidder's request to reduce demand can be applied. Likewise, the auction bidding system would evaluate the activity associated with the bidder's most recently determined demands at that point in the processing to determine whether a request to increase demand can be applied.

87. Because in any given round some bidders may request to increase demands for licenses while others may request reductions, the price point at which a bid is considered by the auction bidding system can affect whether it is applied. In addition to proposing that bids be considered by the system in increasing order of price point, the Commission further proposes that bids not applied because of insufficient aggregate demand or insufficient eligibility be held in a queue and considered, again in order, if there should be excess demand or sufficient eligibility later in the processing after other bids are processed.

88. Therefore, under the proposed procedures, once a round closes, the auction system would process bids to change demand by first considering the bid submitted at the lowest price point and determining the maximum extent to which that bid can be applied given bidders' demands as determined at that point in the bid processing. If the bid can be applied (either in full or partially), the number of licenses the bidder holds at that point in the processing would be adjusted, and aggregate demand would be recalculated accordingly. If the bid cannot be applied in full, the unfulfilled bid, or portion thereof, would be held in a queue to be considered later during bid processing for that round. The FCC auction bidding system would then consider the bid submitted at the next highest price point, applying it in full, in part, or not at all, given the most recently determined demands of bidders. Any unfulfilled requests would again be held in the queue, and aggregate demand would again be recalculated. Every time a bid or part of a bid is applied, the unfulfilled bids held in the queue would be reconsidered, in the order of the original price points of the bids (and by pseudo-random number, in the case of tied price points). The auction bidding system would not carry over unfulfilled bid requests to the next round, however. The bidding system would advise bidders of the status of their bids when round results are released.

e. Price Determination

89. The Commission further proposes bid processing procedures that would determine, based on aggregate demand, the posted price for each product for the round that will serve as the start-of-round price for the next round. Under this proposal, the uniform price for all of the blocks in a product would increase from round to round as long as there is excess demand for blocks in the product but would not increase if aggregate demand does not exceed the available supply of blocks.

90. The Commission proposes that if, at the end of a round, the aggregate demand for blocks in the product exceeds the supply of blocks, the posted price would equal the clock price for the round. If a reduction in demand was applied during the round and caused demand in the product to equal supply, the posted price would be the price at which the reduction was applied. If aggregate demand is less than or equal to supply and no bid to reduce demand was applied for the product, then the posted price would equal the start-of-round price for the round. The range of acceptable bid amounts for the next round would be set by adding the

percentage increment to the posted price.

91. When a bid to reduce demand can be applied only partially, the uniform price for the product would stop increasing at that point, since the partial application of the bid would result in demand falling to equal supply. Hence, a bidder that makes a bid to reduce demand that cannot be fully applied would not face a price for the remaining demand that is higher than its bid price.

92. After the bids of the round have been processed, if the stopping rule has not been met, the FCC auction bidding system would announce clock prices to indicate a range of acceptable bids for the next round. Each bidder would be informed of its processed demand and the extent of excess demand for blocks in each product.

93. The Commission seeks comment on the proposals regarding bid processing for Auction 110.

9. Winning Bids in the Clock Phase

94. Under the proposed clock auction format for Auction 110, if the reserve price to meet the CSEA requirement is met in the clock phase, bidders with processed demand for a product at the time the stopping rule is met will become the winning bidders of licenses corresponding to that number of blocks and will be assigned specific frequencies in the assignment phase. The final clock phase price for a generic block in a product would be the posted price for the final round.

B. Assignment Phase

95. Following the conclusion of the clock phase, if the reserve price to meet the CSEA requirement has been met, the Commission proposes to conduct an assignment phase using a series of single bidding rounds, where each clock phase winning bidder will have the opportunity to indicate its preferences for specific frequency licenses corresponding to the generic blocks it won in the clock phase. A bidder will be assigned contiguous frequencies for blocks it wins within each category and PEA regardless of whether it chooses to bid in the assignment phase.

1. Sequencing and Grouping of PEAs

96. The Commission proposes to sequence assignment rounds to make it easier for bidders to incorporate frequency assignments from previously assigned areas into their bid preferences for other areas, recognizing that bidders winning multiple blocks of licenses generally will prefer contiguous blocks across adjacent PEAs. To that end, the Commission proposes to conduct rounds for the largest markets first to enable bidders to establish a ''footprint'' from which to work.

97. Specifically, the Commission proposes to conduct a separate assignment round for each of the top 20 PEAs and to conduct these assignment rounds sequentially, beginning with the largest PEA. Once the top 20 PEAs have been assigned, the Commission proposes to conduct, for each Regional Economic Area Grouping (REAG), a series of assignment rounds for the remaining PEAs within that region. The six REAGs are: Northeast, Southeast, Great Lakes, Mississippi Valley, Central, and West.

98. The Commission further proposes, where feasible, to group into a single market for assignment any non-top 20 PEAs within a region in which the same winning bidders will be assigned the same number of blocks in each category, and all are subject to the small markets bidding cap or all are not subject to the cap, which will also help maximize contiguity across PEAs. The Commission proposes to sequence the assignment rounds within a REAG in descending order of population for a PEA group or individual PEA. The Commission further proposes to conduct the bidding for the different REAGs in parallel in order to reduce the total amount of time required to complete the assignment phase.

99. The Commission seeks comment on these proposals for sequencing assignment rounds, including conducting separate rounds for the top 20 PEAs, and on the proposal to group PEAs for bidding under some circumstances within REAGs. Are there concerns that, because blocks in the same category but in different PEAs within a REAG may have different restrictions on their use, that the bidding system should not group PEAs for bidding? Or would the potential reduction in the number of bidding rounds outweigh such concerns?

2. Acceptable Bids and Bid Processing

100. Under the Commission's proposal, in each assignment round, a bidder will be asked to assign a price to one or more possible frequency assignments for which it wishes to express a preference, consistent with its winnings for generic blocks in the clock phase. The price will represent a maximum payment that the bidder is willing to pay, in addition to the price established in the clock phase for the generic blocks, for the frequency-specific license or licenses in its bid. In PEAs where there are two categories and a bidder won generic blocks in both categories, the Commission proposes that bidder submit its preferences for blocks won in Cat1 and Cat2 separately, rather than submitting bids for preferences that include blocks in both categories. That is, if a bidder won one block in Cat1 and two blocks in Cat2, it would not be able to submit a single bid amount for an assignment that included both categories. Instead, it would submit its bid or bids for assignments in Cat1 separately from its bid or bids for assignments in Cat2.

101. The Commission proposes to use an optimization approach to determine the winning frequency assignment for each category in each PEA or PEA group. The Commission proposes that the auction system will select the assignment that maximizes the sum of bid amounts among all assignments that satisfy the contiguity requirements. Furthermore, if multiple blocks in a category in a PEA remain unsold, the unsold licenses will be contiguous. The Commission proposes that the additional price a bidder will pay for a specific frequency assignment (above the clock phase price) will be calculated consistent with a generalized ''second price'' approach—that is, the winner will pay a price that would be just sufficient to result in the bidder receiving that same winning frequency assignment while ensuring that no group of bidders is willing to pay more for an alternative assignment that satisfies the contiguity restrictions. This price will be less than or equal to the price the bidder indicated it was willing to pay for the assignment. The Commission proposes to determine prices in this way because it facilitates bidding strategy for the bidders, encouraging them to bid their full value for the assignment, knowing that if the assignment is selected, they will pay no more than would be necessary to ensure that the outcome is competitive. The Commission proposes to determine prices using the Vickrey-nearest approach, which is described in the Assignment Phase Technical Guide available on the Auction 110 website.

102. The Commission seeks comment on these proposed procedures.

V. Tutorials and Additional Information for Applicants

103. The Commission intends to provide additional information on the bidding system and to offer demonstrations and other educational opportunities for applicants in Auction 110 to familiarize themselves with the FCC auction application system and the auction bidding system. For example, the Commission intends to release online tutorials that will help applicants understand the procedures to be followed in the filing of their auction

short-form applications (FCC Form 175) and on the bidding procedures for Auction 110.

VI. Procedural Matters

A. Supplemental Initial Regulatory Flexibility Analysis

104. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 603, the Commission has prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in the *Auction 110 Comment Public Notice* to supplement the Commission's Initial and Final Regulatory Flexibility Analyses completed in the *3.45 GHz Further Notice of Proposed Rulemaking (FNPRM),* 85 FR 66888, October 21, 2020, released October 2, 2020, the *3.45 GHz Second Report and Order,* and other Commission orders pursuant to which Auction 110 will be conducted. Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the same deadline for comments specified in the **DATES** section of this document and on the first page of the *Auction 110 Comment Public Notice.* The Commission will send a copy of the *Auction 110 Comment Public Notice,* including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Auction 110 Comment Public Notice* and Supplemental IRFA (or summaries thereof) will be published in the **Federal Register**.

105. *Need for, and Objectives of, the Proposed Rules.* The *Auction 110 Comment Public Notice* sets forth the proposed auction procedures for those entities that seek to bid to acquire licenses in Auction 110. The *Auction 110 Comment Public Notice* seeks comment on proposed procedural rules to govern Auction 110, which will auction flexible-use licenses for the 3.45 GHz Service. This process is intended to provide notice of and adequate time for potential applicants to comment on proposed auction procedures. To promote the efficient and fair administration of the competitive bidding process for all Auction 110 participants, the Commission seeks comment on the following proposed procedures:

- A requirement that any applicant seeking to participate in Auction 110 certify in its short-form application, under penalty of perjury, that it has read the public notice adopting procedures for Auction 110 that will be released in advance of the short-form deadline, and that it has familiarized itself with those procedures and the requirements for obtaining a license and operating facilities in the 3.45–3.55 GHz band;
- establishment of bidding credit caps for eligible small businesses, very small businesses, and rural service providers in Auction 110;
- designation of AT&T, T-Mobile, and Verizon Wireless as nationwide providers for purposes of the prohibition of certain communications;
- use of anonymous bidding/limited information procedures which will not make public until after bidding has closed: (1) The PEAs that an applicant selects for bidding in its short-form application (FCC Form 175), (2) the amount of any upfront payment made by or on behalf of an applicant for Auction 110, (3) an applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid;
- establishment of an additional default payment of 15% under § 1.2104(g)(2) of the rules in the event that a winning bidder defaults or is disqualified after the auction;
- a specific upfront payment amount for products available in Auction 110;
- establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each generic block;
- establishment of a single aggregate reserve price for the auction to ensure that total cash proceeds from the auction equal at least $14,775,354,330;
- provision of delegated authority to OEA, in conjunction with WTB, to exercise its discretion to delay, suspend, or cancel bidding in Auction 110 for any reason that affects the ability of the competitive bidding process to be conducted fairly and efficiently;
- retention by OEA of discretion to adjust the bidding schedule in order to manage the pace of Auction 110;
- use of a simultaneous stopping rule for Auction 110, under which all blocks in both categories in all PEAs would remain available for bidding until the bidding stops in every PEA;
- use of a clock auction format for Auction 110 under which each qualified bidder will indicate in successive clock bidding rounds its demands for categories of generic blocks in specific geographic areas. Proposed categories are determined based on the framework set forth in the *3.45 GHz Second Report and Order,* in which the lower 40 megahertz of the band—between 3450–3490 MHz corresponding to the A through D blocks—are affected differently than the upper 60 megahertz in certain PEAs in the band;
- to permit bidders to make two types of bids: Simple bids and switch bids. A ''simple'' bid indicates a desired quantity of blocks in a product at a price (either the clock price or an intra-round price). A ''switch'' bid allows the bidder to request to move its demand for a quantity of blocks from Cat1 to Cat2, or vice versa, within the same PEA at a price for the ''from'' category (either the clock price or an intra-round price);
- use of an activity rule that would require bidders to be active on between 90% and 100% of their bidding eligibility in all regular clock rounds;
- use of an activity rule that does not include a waiver of the rule to preserve a bidder's eligibility;
- a specific minimum opening bid amount for products available in Auction 110;
- establishment of acceptable bid amounts, including clock price increments and intra-round bids, along with a proposed methodology for calculating such amounts;
- a proposed methodology for processing bids and requests to reduce and increase demand; and
- establishment of an assignment phase that will determine which frequency-specific licenses will be won by the winning bidders of generic blocks during the clock phase.

106. The proposed procedures for the conduct of Auction 110 constitute the more specific implementation of the competitive bidding rules contemplated by Parts 1 and 27 of the Commission's rules, the *3.45 GHz Second Report and Order,* and relevant competitive bidding orders, and are fully consistent therewith.

107. *Legal Basis.* The Commission's statutory obligations to small businesses under the Communications Act of 1934, as amended, are found in sections 309(j)(3)(B) and 309(j)(4)(D). The statutory basis for the Commission's competitive bidding rules is found in various provisions of the Communications Act of 1934, as amended, including 47 U.S.C. 154(i), 301, 302, 303(r), 304, 307, and 309(j). The Commission has established a framework of competitive bidding rules, updated most recently in 2015, pursuant to which it has conducted auctions since the inception of the auctions program in 1994 and would conduct Auction 110.

108. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* 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 proposed rules and policies, if adopted. 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.

109. As noted, Regulatory Flexibility Analyses were incorporated into the *3.45 GHz FNPRM* and the *3.45 GHz Second Report and Order.* In those analyses, the Commission described in detail the small entities that might be significantly affected. In the *Auction 110 Comment Public Notice,* the Commission incorporates by reference the descriptions and estimates of the number of small entities from the previous Regulatory Flexibility Analyses in the *3.45 GHz FNPRM,* and the *3.45 GHz Second Report and Order.*

110. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. In the first part of the Commission's two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the process, winning bidders file a more comprehensive long-form application. Thus, an applicant that fails to become a winning bidder does not need to file a long-form application and provide the additional showings and more detailed demonstrations required of a winning bidder.

111. The Commission does not expect the processes and procedures proposed in the *Auction 110 Comment Public Notice* will require small entities to hire attorneys, engineers, consultants, or other professionals to participate in Auction 110 and comply with the procedures it ultimately adopts because of the information, resources, and guidance the Commission makes available to potential and actual participants. For example, the Commission intends to release an online tutorial that will help applicants understand the procedures for filing the auction short-form application (FCC Form 175). The Commission also intends to make information on the bidding system available and to offer demonstrations and other educational opportunities for applicants in Auction 110 to familiarize themselves with the FCC auction application system and the auction bidding system. By providing these resources as well as the resources discussed under ''Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered,'' the Commission expects small business entities who use the available resources to experience lower participation and compliance costs. Nevertheless, while the Commission cannot quantify the cost of compliance with the proposed procedures, it does not believe that the costs of compliance will unduly burden small entities that choose to participate in the auction because the proposals for Auction 110 are similar in many respects to the procedures in recent auctions conducted by the Commission.

112. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, 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 and 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.

113. The Commission has taken steps to minimize any economic impact of its auction procedures on small businesses through, among other things, the many resources it provides potential auction participants. Small entities and other auction participants may seek clarification of or guidance on complying with competitive bidding rules and procedures, reporting requirements, and the FCC's auction bidding system. An FCC Auctions Hotline provides access to Commission staff for information about the auction process and procedures. The FCC Auctions Technical Support Hotline is another resource which provides technical assistance to applicants, including small entities, on issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction bidding system. Small entities may also use the web-based, interactive online tutorial produced by Commission staff to familiarize themselves with auction procedures, filing requirements, bidding procedures, and other matters related to an auction.

114. The Commission also makes various databases and other sources of information, including the Auctions program websites and copies of Commission decisions, available to the public without charge, providing a low-cost mechanism for small entities to conduct research prior to and throughout the auction. Prior to and at the close of Auction 110, the Commission will post public notices on the Auctions website, which articulate the procedures and deadlines for the auction. The Commission makes this information easily accessible and without charge to benefit all Auction 110 applicants, including small entities, thereby lowering their administrative costs to comply with the Commission's competitive bidding rules.

115. Prior to the start of bidding, eligible bidders will be given an opportunity to become familiar with auction procedures and the bidding system by participating in a mock auction. Further, the Commission intends to conduct Auction 110 electronically over the internet using its web-based auction system that eliminates the need for bidders to be physically present in a specific location. Qualified bidders also have the option to place bids by telephone. These mechanisms are made available to facilitate participation in Auction 110 by all eligible bidders and may result in significant cost savings for small business entities that use these alternatives. Moreover, the adoption of bidding procedures in advance of the auction, consistent with statutory directive, is designed to ensure that the auction will be administered predictably and fairly for all participants, including small entities.

116. For Auction 110, the Commission proposes a $25 million cap on the total bidding credit amount that may be awarded to an eligible small business and a $10 million cap on the total bidding credit amount that may be awarded to a rural service provider. In addition, the Commission proposes a $10 million cap on the overall amount of bidding credits that any winning small business bidder may apply to winning licenses in PEAs with a population of 500,000 or less. The Commission seeks comment on whether the expected capital requirements associated with operating in the 3.45–

3.55 GHz band, the potential number and value of 3.45 GHz Service licenses, past auction data, or any other considerations justify a higher cap for either type of bidding credit, and whether there are convincing reasons for not maintaining parity with the bidding credit caps in other recent spectrum auctions. Based on the technical characteristics of the 3.45–3.55 GHz band and its analysis of past auction data, the Commission anticipates that the proposed caps will allow the majority of small businesses to take full advantage of the bidding credit program, thereby lowering the relative costs of participation for small businesses.

117. These proposed procedures for the conduct of Auction 110 constitute the more specific implementation of the competitive bidding rules contemplated by parts 1 and 27 of the Commission's rules, the *3.45 GHz Second Report and Order,* and relevant competitive bidding orders, and are fully consistent therewith.

118. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

B. Paperwork Reduction Act Analysis

119. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Deadlines and Filing Procedures

120. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments or reply comments on or before the dates indicated in the **DATES** section of this document and on the first page of the document in AU Docket No. 21–62. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. We strongly encourage interested parties to file comments electronically.

121. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations must file a copy of any written presentations or memoranda summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine Period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to the Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2021–06545 Filed 4–6–21; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2021–0007; FF09E21000 FXES11110900000 212]

RIN 1018–BE80

Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding and Threatened Species Status With Section 4(d) Rule for Suwannee Alligator Snapping Turtle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Suwannee alligator snapping turtle (*Macrochelys suwanniensis*), a freshwater turtle species from the Suwannee River basin in Georgia and Florida, as a threatened species. After a review of the best available scientific and commercial information, we find that listing the species is warranted. Accordingly, we propose to list the Suwannee alligator snapping turtle as a threatened species with a rule issued under section 4(d) of the Act (''4(d) rule''). If we finalize this rule as proposed, it would add the species to the List of Endangered and Threatened Wildlife and extend the Act's protections to the species.

DATES: We will accept comments received or postmarked on or before June 7, 2021. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by May 24, 2021.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2021–0007, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail: Public Comments Processing, Attn: FWS–R4–ES–2021–0007, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275

Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see *Public Comments,* below, for more information).

FOR FURTHER INFORMATION CONTACT: Jay Herrington, Field Supervisor, Northeast Florida Ecological Services Field Office; *Jay_Herrington@fws.gov,* 904–731–3191 or Panama City Ecological Services Field Office, 1601 Balboa Avenue, Panama City, FL 32405. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine that a species is an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designating critical habitat can only be completed by issuing a rule.

What this document does. This document proposes to list the Suwannee alligator snapping turtle (*Macrochelys suwanniensis*) as a threatened species and to provide measures under section 4(d) of the Act that are tailored to our current understanding of the conservation needs of the Suwannee alligator snapping turtle (a ''4(d) rule'').

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the primary threats acting on the Suwannee alligator snapping turtle include illegal harvest and collection (Factor B), nest predation (Factor C), and hook ingestion and entanglement due to bycatch associated with freshwater fishing (Factor E). Existing regulatory mechanisms (Factor D) are not adequate to address these threats. Disease (Factor C) and climate change (Factor E) might negatively influence the species, but the impacts of these threats on the species are uncertain based on current information.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing, to the maximum extent prudent and determinable.

Peer Review

We prepared a species status assessment report (SSA report) for the Suwannee alligator snapping turtle. The SSA report represents the compilation and assessment of the best scientific and commercial information available concerning the status of the species, including the past, present, and future factors influencing the viability of the species (Service 2020, entire). In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of four appropriate specialists regarding the Suwannee alligator snapping turtle, and received one response which informed this proposed rule. The purpose of peer review is to ensure that our listing determinations, critical habitat designations, and 4(d) rules are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in population modeling and the biology, habitat, and threats to the species. All comments received from the peer reviewers are publicly available and posted on *http://www.regulations.gov.*

Information Requested

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Historical and current range including distribution patterns;

(c) Relationship between densities and habitat types;

(d) Population impacts and extent of hook ingestion and entanglement associated with recreational fishing;

(e) Population impacts and extent of poaching;

(f) Recruitment and population impacts associated with nest and hatchling predation;

(g) Historical and current population levels, and current and projected trends; and

(h) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The spatial distribution and extent of real and perceived threats to this species. Notably, we seek any information on areas within the species' range where these threats may overlap and potentially act synergistically as well as where there may be a complete absence of threats.

(3) Biological, commercial trade (including pet trade and breeding for personal collections), or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of the species, including the locations of any additional populations of the species.

(5) Information, especially from the commercial and recreational fishing communities, about the design of a turtle escape or exclusion device and modified trot line techniques that would effectively eliminate or significantly reduce bycatch of alligator snapping turtles from recreational fishing.

(6) Whether the measures outlined in the proposed section 4(d) rule are necessary and advisable for the conservation and management of the Suwannee alligator snapping turtle. We particularly seek comments concerning:

(a) Whether we should include a provision related to excepting incidental take resulting from legal recreational or commercial fishing activities for other targeted species, in compliance with State regulations. In addition, if we include such a provision, should we also include a requirement to report to the Service injured or dead turtles resulting from such legal fishing activities.

(b) Whether the provision related to excepting incidental take associated with Federal and State captive-breeding programs to support conservation efforts

for wild populations (*i.e.,* head-starting) that use permitted brood stock and approved turtle husbandry practices in accordance with State regulations and U.S. Fish and Wildlife Service policy should be revised or clarified to remove or add information including additional restrictions or deferments, or additional best management practices.

(c) Whether the provisions related to excepting incidental take resulting from construction, operation, and maintenance activities; pesticide and herbicide application; and silviculture practices and forestry activities that follow best management practices should be revised or clarified to remove or add information including spatial or temporal restrictions or deferments, or additional best management practices.

(d) Whether there are additional provisions the Service may wish to consider for the final section 4(d) rule in order to conserve, recover, and manage the Suwannee alligator snapping turtle, such as turtle excluder devices, limitations on road construction and other infrastructure or construction activities, riparian management activities, or wetland management activities.

(7) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information to inform the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States; or

(d) No areas meet the definition of critical habitat.

(8) Specific information on the possible risks or benefits of designating critical habitat, including risks associated with publication of maps designating any area on which this species may be located, now or in the future, as critical habitat. We specifically request information on the threats of taking or other human activity on the Suwannee alligator snapping turtle and its habitat, and the extent to which designation might increase those threats, as well as the possible benefits of critical habitat designation to the species.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the actions under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.'' You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov.*

Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species is endangered instead of threatened, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the 4(d) rule if we conclude it is appropriate in light of comments and new information received. For example, we may expand the incidental-take prohibitions to include prohibiting additional activities if we conclude that those additional activities are not compatible with conservation of the species. Conversely, we may establish additional exceptions to the incidental-take prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species.

Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulation at 50 CFR 424.16(c)(3).

Previous Federal Actions

The Service received a petition to list 53 amphibians and reptiles across the United States, including the alligator snapping turtle (*Macrochelys temminckii*), as threatened or endangered species on July 11, 2012. The subsequent 90-day finding (80 FR 37568, July 1, 2015) provided that the petition was substantial, and the alligator snapping turtle's status warranted further review. On September 1, 2015, the petitioner submitted supplemental information to add to the petition that described new studies that could lead to taxonomic differentiation of the single *Macrochelys* species into multiple entities (Center for Biological Diversity 2015, entire). This information was considered and is described in further detail below under the Background section of the Proposed Listing Determination section in this document. New information since the time of the original petition provided sufficient evidence to split alligator snapping turtle (*Macrochelys temminckii*) into two separate species based on genetic and morphological differences as well as geographic isolation, resulting in alligator snapping turtle (*M. temminckii*) and Suwannee alligator snapping turtle (*M. suwanniensis*). We are considering the two species for listing independently, and this proposed rule serves as the 12-month finding for the Suwannee alligator snapping turtle (*M. suwanniensis*).

Supporting Documents

A Species Status Assessment team composed of Service biologists prepared the SSA report for the Suwannee alligator snapping turtle (Service 2020, entire); the SSA team consulted with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of factors (both negative and beneficial) affecting the species in the past, present, and future. To ensure the scientific integrity of the analyses and information in the report, the SSA report was sent to four independent peer reviewers; one reviewer provided comments.

The SSA report and other materials relating to this proposal can be found at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2021–0007.

I. Proposed Listing Determination

Background

A thorough review of the taxonomy, distribution, life history, and ecology of the Suwannee alligator snapping turtle (*Macrochelys suwanniensis*) is presented in the SSA report (Service 2020, pp. 5–13); however, much of this information is based on the *Macrochelys* genus as a whole and is not specific to the Suwannee alligator snapping turtle. Turtles in the genus *Macrochelys* are the largest species of freshwater turtle in North America, are highly aquatic, and are somewhat secretive. The genus includes two distinct species, *M. temminckii* and *M. suwanniensis. Macrochelys* turtles are characterized as having a large head, long tail, and an upper jaw with a strongly hooked beak. They have three raised keels with posterior elevations on the scutes of the carapace (upper shell), which is dark brown and often has algal growth that adds to their camouflage. Their eyes are positioned on the side of the head and are surrounded by small, fleshy, pointed projections that are unique to the genus.

Suwannee alligator snapping turtles are primarily freshwater turtles endemic to the Suwannee River basin and found more abundantly in the middle reaches of the Suwannee River where freshwater springs contribute to an increase in productivity of the aquatic system (Enge et al. 2014, p. 36). These turtles are typically bottom-dwelling, but surface periodically to breathe (Thomas 2014, p. 60). While the species is typically found in fresh water, it can tolerate some salinity and brackish waters, as barnacles have been found on the carapace of some turtles. The species is found in a variety of habitats across its range, but all life stages rely on submerged material (*i.e.,* deadhead logs and vegetation) as important structure for resting, foraging, and cover from predators (Enge et al. 2014, p. 39).

The Suwannee River basin encompasses parts of southern Georgia and northern Florida. Main water bodies that currently or historically supported Suwannee alligator snapping turtle include the Suwannee River, Santa Fe River, New River, Alapaha River, Little River, and Withlacoochee River. Historical distribution records of the Suwannee alligator snapping turtle are sparce, however it is thought the species has and is limited to the Suwannee river basin. Individuals occupy main river channels and tributaries, when habitat is present.

The Suwannee River experiences longitudinal changes in water chemistry from the low-nutrient acidic blackwater at the head to the saline delta (Ceryak et al. 1983, p. 46). Tidal variation is particularly evident during low-flow condition and can extend up to 43 kilometers (km, 26.7 miles) upstream from the mouth. Woody debris, undercut banks, and large rocks found throughout the river are important habitat during low water levels (Enge et al. 2014, p. 10).

The Suwannee alligator snapping turtle is a member of the Family Chelydridae, Order Testudinata, Class Reptilia. The taxonomic history of the alligator snapping turtle is complex and continues to evolve. The species was first described in 1789 as *Testudo planitia,* but Gray placed it in the genus *Macrochelys* in 1856. Although subsequent authors referred to the genus as *Macrochelys,* this placement was refuted and it was believed the alligator snapping turtle should be included in the genus *Macroclemys* (Smith 1955, p. 16). In 1995, Webb demonstrated that the genus *Macrochelys* has precedence over *Macroclemys,* and the Society for the Study of Amphibians and Reptiles adopted this revision in 2000 (Crother et al. 2000, p. 79). Accordingly, for the purpose of this proposed rule, we will use *Macrochelys* as the genus name for the two distinct species, alligator snapping turtle (*Macrochelys temminckii*) and Suwannee alligator snapping turtle (*M. suwanniensis*). An abbreviated common name, Suwannee snapping turtle, may be used; however, Suwannee alligator snapping turtle is the preferred common name since the species is within the alligator snapping turtle genus and not the snapping turtle genus, *Chelydra.*

Historically, the alligator snapping turtle (*Macrochelys temminckii*) was considered a single, wide-ranging species until a recent analysis of variation in morphology and genetic structure among *M. temminckii* specimens resulted in differentiation of three species of alligator snapping turtles: Alligator snapping turtle (*M. temminckii*), Apalachicola alligator snapping turtle (*M. apalachicolae*), and Suwannee alligator snapping turtle (*M. suwanniensis*) (Thomas et al. 2014, entire).

Subsequent morphological and genetic comparisons did not support distinguishing *Macrochelys apalachicolae* from *M. temminckii;* however, the data supported separation of the Suwannee population as a distinct species (Folt and Guyer 2015, entire).

In addition, seven rivers lie between *Macrochelys suwanniensis* and the most eastern population of *M. temminckii* where neither species has been documented (Ewert et al. 2006, pp. 60–61). This distributional gap likely resulted in the divergence of the Suwannee alligator snapping turtle due to geographical and genetic isolation as indicated by genetic and morphological distinction of *M. suwanniensis* (Folt and Guyer 2015, p. 449). The herpetology community, including the Society for the Study of Amphibians and Reptiles, recognizes two species of *Macrochelys:* (1) *M. temminckii* and (2) *M. suwanniensis* (Crother 2017, p. 88). The Turtle Taxonomy Working Group also concurs with the recognition of two species and provides evidence to support the distinction of *M. suwanniensis* (Rhodin et al. 2017, p. 26).

Throughout this document, we provide descriptions of Suwannee alligator snapping turtle where the information is available specific to the species. We describe Suwannee alligator snapping turtle as *Macrochelys suwanniensis* or Suwannee alligator snapping turtle. We reference *Macrochelys* when describing the genus and *Macrochelys temminckii* when referring to the second species of the genus, alligator snapping turtle. Since the taxonomic distinction of the two *Macrochelys* spp. is relatively recent, we may refer to the genus, or alligator snapping turtles in general, to describe life-history traits.

The Suwannee alligator snapping turtle is primarily carnivorous and forages on small fish and mussels; however, adults are opportunistic feeders and may also consume crayfish, mollusks, smaller turtles, insects, nutria, snakes, birds, and plant material such as acorns or other available vegetation (Elsey 2006, pp. 448–489). *Macrochelys* turtles have evolutionarily developed an anatomical feature unique to the genus that assists with their predatory foraging

strategy. These turtles have an appendage of soft tissue attached underneath the tongue that resembles a live, wiggling worm and serves as a lure to attract fish and other unsuspecting prey while the turtle is stationary with an open mouth. They have very fast reflexes and powerful jaws that aid in this type of foraging behavior.

The general life stages of *Macrochelys* spp. can be described as egg, hatchling (first year), juvenile (second year until age of sexual maturity), and adult (age of sexual maturity through death). Each life stage has specific requirements in order to contribute to the productivity of the next life stage. They excavate nests in sandy soils or other dry substrate near freshwater sources that are within 8 to 656 feet (2.5 to 200 meters) from the shore. The incubation period for Suwannee alligator snapping turtle is between 105 to 110 days (Ernst and Lovich 2009, p. 145).

Nests require temperatures of 66 to 80 degrees Fahrenheit (F) (19 to 26.5 degrees Celsius [C]), increasing to 79 to 98 degrees F (26.1 to 36.5 degrees C) as the season progresses. The sex ratio of Suwannee alligator snapping turtles in the nest is dependent on the temperature of the nest during embryonic development. The offspring's sex is influenced by the physiological mechanism—temperature-dependent sex determination—where more males are produced at intermediate incubation temperatures, and more females are produced at the two, warmer and cooler, temperature extremes (Ernst and Lovich 2009, pp. 16, 146). Alligator snapping turtles, in general, have a pivotal temperature range of 77 to 80.6 degrees F (25 to 27 degrees C) that produces more male hatchlings than females (Ewert and Jackson 1994, pp. 12–13).

Once emerged from the nest, hatchlings need shallow water with riparian vegetative structure that provides canopy cover. Juveniles require small streams with mud and gravel bottoms that have submerged structures, such as tree root masses, stumps, and submerged live and dead trees that allows for foraging and protection from predators. Juvenile survival rate is estimated at only about 5 percent, with most mortality occurring in the first 2 years of life (Ernst and Lovich 2009, p. 150).

Males achieve sexual maturity in 11–21 years and females in 13–21 years (Ernst and Lovich 2009, p. 144; Reed et al. 2002, p. 4). The age of sexual maturity can be influenced by the size of the turtle, as size increases are greater when food resources and other environmental conditions are more favorable. Adult Suwannee alligator snapping turtles require streams and rivers with submerged logs and undercut banks, clean water, and ample prey. Turtles found in higher quality habitat are more likely to become sexually mature at an earlier age and may also produce larger clutch sizes (Ernst and Lovich 2009, p. 145). Adult turtles require access to mates to fertilize eggs, with mating occurring underwater (Ernst and Lovich 2009, p. 144). Mating has been observed in captive alligator snapping turtles from February to October, but geographic variation within the wild population is not well understood (Reed et al. 2002, p. 4). A gravid female will search for suitable nesting habitat on land to construct a nest, avoiding low forested areas with abundant leaf litter and root mats that may cause nesting obstructions. She will excavate a cavity, deposit the eggs, and bury the eggs that are about 24 centimeters (cm) in depth in approximately 3.5 to 4 hours (Ewert 1976, p. 153; Powders 1978, p. 155; Thompson et al. 2016, entire). Once the female has completed the nest, she returns to the water, and there is no other parental care of the nest or offspring.

Female alligator snapping turtles may produce a single clutch once a year or every other year at most even if the conditions are good (Reed et al. 2002, p. 4). Clutch size may vary across the species' range between 9 to 61 eggs, with a mean clutch size of 27 eggs (Ernst and Lovich 2009, p. 145). Most nesting occurs from May to July (Reed et al. 2002, p. 4).

Suwannee alligator snapping turtles are long-lived species; provided suitable conditions, adults can reach carapace lengths of up to 29 inches and 249 pounds for males, while females can reach lengths of 22 inches and 62 pounds. The oldest documented *Macrochelys* turtle in captivity survived to at least 80 years of age, but in the wild, the species may live longer (Ernst and Lovich 2009, p. 147). The generation time for the species is around 31 years (range = 28.6–34.0 years, 95 percent confidence interval, Folt et al. 2016, p. 27).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could influence 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 the threats acting on the species. We also consider the cumulative effect of the threats as well as 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.

Analytical Framework

The SSA report documents the results of our comprehensive biological status review, including an assessment of the potential threats to the species (Service 2020, entire). The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket FWS–R4–ES–2021–0007 on *http://www.regulations.gov.*

To assess the Suwannee alligator snapping turtle's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluate an individual species' life-history needs. The next stage involves an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involves making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decisions.

Summary of Biological Status and Threats

In this section, we review the biological condition of Suwannee alligator snapping turtle and its needs and describe the factors that influence the species' overall viability and the risks to that viability.

Threats

We provide information regarding past, present, and future influences, including both positive and negative, on the Suwannee alligator snapping turtle's current and future viability including illegal harvest (Factor B), bycatch (Factor E), habitat alteration (Factor A), nest predation (Factor C), climate change (Factor E), and conservation measures. The existing regulatory mechanisms (Factor D) have not been adequate to arrest the decline of the species. Additional threats such as historical commercial and recreational harvest targeting the species, disease, parasitic insects, and contaminants are described in the SSA; these additional threats may negatively affect individuals of the species or historically affected the species, particularly when compounded with other ongoing stressors or threats. However, they do not threaten the species' overall viability.

Harvest (Commercial and Poaching)

Commercial and Recreational Harvest

Commercial and recreational turtle harvesting practices in the last century resulted in a decline of the Suwannee alligator snapping turtle across its range (Enge et al. 2014, p. 4). Commercial harvest of both species of alligator snapping turtles reached its peak in the late 1960s and 1970s when the meat was used for commercial turtle soup products and sold in large quantities for public consumption. In addition, many restaurants served turtle soup and purchased large quantities of alligator snapping turtles from trappers in the southeastern States (Reed et al. 2002, p. 5). In the 1970s, the demand for turtle meat was so high that as much as three to four tons of alligator snapping turtles (*M. temminckii*) were harvested from the Flint River in Georgia per day (Pritchard 1989, p. 76). The Florida Game and Fresh Water Fish Commission (now the Florida Fish and Wildlife Conservation Commission [FWC]) reported significant numbers of turtles being taken from the Apalachicola and Ochlocknee Rivers to presumably be sent to restaurants in New Orleans and other destinations (Pritchard 1989, pp. 74–75). While such large-scale removal of *Macrochelys* turtles occurred across the range of the genus, the population demographics of Suwannee alligator snapping turtles in Florida indicate there was likely less commercial harvesting activities in the Suwannee River drainage than elsewhere (Enge et al. 2017, p. 6; Enge et al. 2014, entire; Johnston et al. 2015, entire).

Florida prohibited the commercial harvest of all *Macrochelys* spp. in 1972 and recreational or personal harvest in 2009; Georgia prohibited all harvest in 1992 (Service 2020, pp. 14–15). Despite the prohibitions on commercial and recreational harvest for the species, the effects from historical removal of large turtles continues to affect the species due to their low fecundity, low juvenile survival, long lifespan, and delayed maturity. Commercial harvest is not currently a threat to Suwannee alligator snapping turtle, but the effect of historical large-scale removal of large turtles is ongoing.

Illegal Harvest (Poaching)

Although both Florida and Georgia have prohibited recreational harvest, there is an international and domestic demand for turtles for consumption and for herpetofauna enthusiasts who collect turtle species for pets (Stanford et al. 2020, entire). The Suwannee alligator snapping turtle is no exception; farmed, hatchling alligator snapping turtles may be sold for up to 195 U.S. dollars per turtle (Lejeune et al. 2020, p. 8; MorphMarket 2020, unpaginated). Illegal harvest, or poaching, of Suwannee alligator snapping turtle may occur anywhere within its range for both the pet trade and turtle meat trade. The best available information regarding potential pressure from poaching comes from documented reports by law enforcement agencies and court cases involving the congeneric (species within the same genus) alligator snapping turtle. In a 2017 case, 3 men were convicted of collecting 60 large alligator snapping turtles (*M. temminckii*) in a single year in Texas and transporting them across State lines, violating the Lacey Act (Department of Justice 2017, entire). We expect that illegal harvest is affecting Suwannee alligator snapping turtles, given it has been documented on many occasions for the heterospecific alligator snapping turtle. Illegal harvest is an ongoing threat to Suwannee alligator snapping turtle because removing adult female turtles from the population lowers the viability of the species by reducing reproductive potential; in addition, the species is long-lived, slow to mature, and juvenile survival is very low making it more difficult for the historically over-harvested population to recover.

Aside from the local and domestic use of turtles, the global demand for pet turtles and turtle meat continues to increase. Many species of turtles are collected from the wild as well as bred in captivity and are sold domestically and exported internationally. *Macrochelys* spp. are regularly exported out of the United States, typically as hatchlings or juveniles, to initiate brood stock for overseas turtle farms and for turtle collectors. According to the Service's Law Enforcement Management Information System (LEMIS), which provides reports about the legal international wildlife trade, most shipments of live alligator snapping turtles exported from 2005 to 2018 consisted of small turtles destined mostly for Hong Kong and China (Service 2018, entire). Prior to 2006, up to 23,780 *M. temminckii* per year were exported from the United States (70 FR 74700, December 16, 2005).

In 2006, *Macrochelys temminckii* was listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as an Appendix III species to allow for better monitoring of exports. At the time of the CITES listing, *M temminckii* was a single species; thus, *M. suwanniensis* is included under this listing.

Impacts of Harvest

Because of Suwannee alligator snapping turtle's life history with delayed maturity, long generation times, and relatively low reproductive output, the species cannot sustain collection from the wild, especially of adult females, over any length of time (Reed et al. 2002, pp. 8–12). Adult turtles do not reach sexual maturity until 11 to 21 years of age. A mature female typically produces only one clutch per year consisting of 8–52 eggs (Ernst and Barbour 1989, p. 133). These turtles are characterized by low survivorship in early life stages, but surviving individuals may live many decades once they reach maturity. The life-history traits of the species (low fecundity, late age of maturity, and low survival of nests and juveniles) contribute to the population's slow response rebound after historical over-exploitation. Therefore, population growth rates are extremely sensitive to the harvest of adult females. Adult female survivorship less than 98 percent per year is considered unsustainable, and a further reduction of this adult survivorship will generally result in significant local population declines (Reed et al. 2002, p. 9), though dynamics likely vary across the species' range. These data underscore how influential adult female mortality is on the ability of the species to maintain viable populations.

Although regulatory harvest restrictions have decreased the number of Suwannee alligator snapping turtles harvested, populations have not necessarily increased in response. This lag in population response is likely due to the demography of the species—specifically delayed maturity, long generation times, and relatively low reproductive output. The Suwannee alligator snapping turtle population remains low despite commercial and recreational harvest prohibitions (Florida Fish and Wildlife Conservation Commission 2017, p. 6).

Bycatch

Suwannee alligator snapping turtles can be killed or harmed incidentally during fishing and other recreational activities. Some of these threats include fish hook ingestion, drowning when hooked on trotlines (a fishing line strung across a stream with multiple hooks set at intervals) and limb lines, or bush hooks, (single hooks hung from branches), jug lines (line with a hook affixed to a floating jug) along with injuries and drowning when entangled in various types of fishing line. Hoop nets are also used to capture catfish and baitfish and are made up of a series of hoops with netting and funnels where fish enter but are unable to escape through the narrow entry point. The nets are left submerged and may entrap small Suwannee alligator snapping turtles that enter the traps and are unable to escape. Boats and boat propeller strikes may also injure or kill Suwannee alligator snapping turtles; however, this effect is not limited to fishing boats.

Actively used or discarded fishing line and hooks pose harm to Suwannee alligator snapping turtles. They can ingest baited fishhooks and attached fishing line and, depending on where ingested hooks and line lodge in the digestive tract, they can cause harm or death (Enge et al. 2014, pp. 40–41). For example, hooks and line can cause gastrointestinal tract blockages, and the hooks can puncture the digestive organs, leading to mortality (Enge et al. 2014, pp. 40–41). Fishhooks have been found in the gastrointestinal tracts of radiographed Suwannee alligator snapping turtles (Enge et al. 2014, entire; Thomas 2014, pp. 42–43).

Trotlines also negatively affect Suwannee alligator snapping turtles. Trotlines are a series of submerged lines with hooks off a longer line. Trotline fishing involves leaving the lines unattended for extended periods, before returning to check them. Limblines and bush hooks are similar to trot lines in that they are typically set and left unattended; however, they only use a single hook. The turtles can become entangled in the lines and drown, as well as ingest trotline hooks and lines, also causing drowning or internal injuries. Bycatch from trotlines that resulted in mortality of *Macrochelys* turtles has been well documented. Dead turtles have been found on lines that had seemingly been abandoned (Moore et al. 2013, p. 145). The lines and hooks may also become dislodged from their place of attachment when left unattended, becoming aquatic debris that remains in the waterway for extended periods of time and may continue to be an entanglement hazard for many species, including Suwannee alligator snapping turtles.

Another stressor associated with recreational fishing and boating is harm

caused by boat propeller strikes. Collisions with boat propellers by unsuspecting surfacing or submerged turtles can injure them resulting in extensive damage to their carapaces, though effects on population demographic rates are unknown (Enge et al. 2014, p. 41).

Habitat Alteration

Suwannee alligator snapping turtle aquatic and nesting habitats have been altered by anthropogenic disturbances. Changes in the riparian or nearshore areas affect the amount of suitable soils for nesting sites because the species constructs nests on land near the water. Riparian cover is important as it moderates in-stream water temperatures and dissolved oxygen levels. In addition to affecting the distribution and abundance of alligator snapping turtle prey species, these microhabitat conditions affect the snapping turtles directly. Moderate temperatures and sufficient dissolved oxygen levels allow the turtles to remain stationary on the stream bottom for longer periods, increasing the ambush foraging opportunities. Changes in the riparian structure may affect the microclimate and conditions of the associated water body, directly affecting the foraging success of the turtles.

Activities and processes that can alter habitat include dredging, deadhead logging (removal of submerged or partially submerged snags, woody debris and other large vegetation for wood salvage), removal of riparian cover, channelization, stream bank erosion, siltation, and land use adjacent to rivers (*e.g.,* clearing land for agriculture). These activities negatively influence habitat suitability for Suwannee alligator snapping turtles. Erosion can change the stream bank structure affecting the substrate that may be suitable for nesting or accessing nesting sites. Siltation affects water quality and may reduce the health and availability of prey species. Channelization destroys the natural benthic habitat and also affects the water depth and normal flow. Submerged obstacles may be removed during the channelization, which affects the microhabitat dynamics within the waterway and removes important structure for alligator snapping turtles to use for resting, foraging, and cover from predators. While channelization within the species' range does not regularly occur, it is not prohibited. Deadhead logs and fallen riparian woody debris, where present, provide refugia during low-water periods and resting areas for all life stages and support important feeding areas for hatchlings and juveniles (Enge et al. 2014, p. 40; Ewert et al. 2006, p. 62).

Suwannee alligator snapping turtle habitat is also influenced by water availability and quantity as well as water quality across its range. Ground water withdrawals in the Florida portion of the species' range are managed by the Suwannee River Water Management District (SRWMD); withdrawals increased by 64 percent between 1975 and 2000, mostly for irrigation. Most withdrawals in the basin occur in agricultural areas along the Suwannee River during the spring (March through May) (Thom et al. 2015, p. 2). Water withdrawals may reduce flow in some streams, effectively isolating some turtles from the rest of the population or making immature turtles more vulnerable to predators. Additionally, reduced water levels may impact prey abundance and distribution through restricting habitat connectivity, reducing dissolved oxygen levels, and increasing water temperatures.

Water quality may also be a factor for Suwannee alligator snapping turtles as contaminants enter the aquatic systems through runoff. The Lower Suwannee River's middle and lower basins are directly impacted by nutrients, including nitrates. Agricultural practices are the main source of nitrates, which specifically come from fertilizers and in some cases from manure and other waste products. They introduce nitrates to the river and groundwater (*i.e.,* springs) through surface runoff and groundwater seepage. Groundwater seepage transports nitrates to the aquifer, which then reemerge through springs and other groundwater discharge, especially during low flow periods (Pittman et al. 1997, entire; Katz et al. 1999, entire; FDEP 2003; Thom et al. 2015, p. 2).

The direct effects of water quality and water quantity on Suwannee alligator snapping turtle have not been quantified; however, as the human population that relies on water systems in the species' range continues to increase, the indirect effects across the entire range, coupled with other stressors, is likely to further reduce the species' viability. Underscoring the potential severity of this threat, Florida's human population is anticipated to grow from nearly 21.5 million in 2019 to more than 24.0 million by 2030 (Rayer and Wang 2020, p. 9). The public water supply demand will increase with increased human population growth. All counties within the species' range in Florida (Columbia, Union, Bradford, Alachua, Gilchrist, Levy, Dixie, Lafayette, Suwannee, Madison, and Hamilton Counties) are part of the SRWMD supply area and are projected to increase in public water supply demand by an average of 11.29 percent increase in millions of gallons of water per day from 2010 to 2035 (SRWMD 2015, p. 42). In addition, the human population in these counties will experience an average of 17.25 percent population growth from the year 2010 to 2035 (SRWMD 2015, p. 43). As the human population increases, other threats to the species and its habitat are likely to increase. For example, recreational use of the Suwannee River will more than likely continue to rise, which will increase human encounters with Suwannee alligator snapping turtle through incidental bycatch or boat strikes. Also, more development may result in an increase in contaminated runoff and declines in water quality.

Nest Predation

Nest predation rates for *Macrochelys* spp. are high. Raccoons (*Procyon lotor*) are common nest predators, but nine-banded armadillos (*Dasypus novemcinctus*), Virginia opossums (*Didelphis virginiana*), bobcats (*Lynx rufus*), and river otters (*Lontra canadensis*) may also depredate nests (Ernst and Lovich 2009, p. 149; Ewert et al. 2006, p. 67; Holcomb and Carr 2013, p. 482). Additional nonnative species found within the species' range that may depredate nests include feral pigs (*Sus scrofa*) and invasive red imported fire ants (*Solenopsis invicta*) (Pritchard 1989, p. 69). Although not documented in Suwannee alligator snapping turtle nests, fire ants are prevalent across the species' range, and predation by fire ants was the suspected culprit in the failure of alligator snapping turtle (*M. temminckii*) nests in Louisiana (Holcomb 2010, p. 51). Beyond nest failure, some hatchlings endured wounds inflicted by fire ants that led to the loss of a limb or tail, which reduced their mobility and their chance of survival (Holcomb 2010, p. 72). The recovery of the species from historical overharvest depends on successful reproduction and survival of young. The currently low population size does not allow for absorbing the impact of elevated nest predation. The degree of added threat from the newer, introduced nest predators is unknown, but we can conclude that the overall threat from nest predation is greater than it was in the past because of the introduced predators. Coupled with other threats, nest predation will continue to negatively affect the species' overall viability.

Climate Change

Climate change may also affect Suwannee alligator snapping turtle to varying degrees, but the extent of impact is influenced by certain geographical factors, including proximity to the coast and latitudinal thermogradients. Climate change may affect Suwannee alligator snapping turtle in several ways. First, increased water withdrawal for human use (*i.e.,* potable water and agriculture irrigation) and reduced precipitation may directly and indirectly impact habitat, food, and water availability throughout the Suwannee river basin. In addition, available water will be affected as greater evaporation will occur with continued warming temperatures. Furthermore, increased temperatures may have physiological impacts on sex ratios because these turtles have temperature-dependent sex determination, and higher temperatures may skew the sex ratio.

In the southeastern United States, temperatures are predicted to warm by 4–8 °F (2.2–4.4 °C) by 2100 (Carter et al. 2014, p. 399). Temperature determines the sex of the *Macrochelys* developing embryos; certain nest temperatures result in primarily male hatchlings with females produced at temperatures of the two extremes of the intermediate male-producing temperatures. Females are produced when the nest temperatures are either cooler or warmer than the temperature threshold for male development. In order to develop mixed ratios of both sexes, fluctuating temperatures near the intermediate and extremes are ideal. In addition to temperature effects on sex ratio, temperature has been associated with nest viability, with highest viability in nests with intermediate sex ratios (produced at the male-producing intermediate temperature range with fluctuations of warmer or cooler temperatures for female-producing temperatures during the incubation period) and lowest in nests with female-biased sex ratios (Ewert and Jackson 1994, pp. 28–29). Thus, warming temperatures might lead to Suwannee alligator snapping turtle nests with strongly female-biased sex ratios. These skewed sex ratios may result in declining viability as mating behaviors are altered and other issues with unbalanced populations arise.

Collectively, these impacts from reduced precipitation and increased temperature would reduce the quality or availability of suitable habitat for the Suwannee alligator snapping turtle (Thom et al. 2015, p. 126). Climate change impacts on the Suwannee alligator snapping turtle will likely act in concert with and exacerbate other threats and stressors' impacts.

Other Stressors

Other stressors that may affect Suwannee alligator snapping turtles include disease, nest parasites, contaminants from urban and agricultural runoff, and historical recreational harvest, but none of these stressors rise to the level of a threat. These stressors may act on individuals or have highly localized impacts., While each is relatively uncommon, these stressors may exacerbate the effects of other ongoing threats.

Additional information on these stressors acting on the species is available in the species' SSA in the Factors Influencing Viability section (Service 2020, pp. 14–20). It includes historical and current threats that have caused and are causing a decline in the species' viability. The primary threats currently acting on the species include illegal harvest, nest predation, and hook ingestion/entanglement. These primary threats are not only affecting the species now but are expected to continue impacting the species and were included in the species' future condition projections in the SSA (Service 2020, pp. 30–45).

Regulatory Mechanisms

Several State and Federal regulatory mechanisms protect the Suwannee alligator snapping turtle and its habitat.

Clean Water Act

Section 401 of the Federal Clean Water Act (CWA) requires that an applicant for a Federal license or permit provide a certification that any discharges from the facility will not degrade water quality or violate water-quality standards, including State-established water quality standard requirements. Section 404 of the CWA establishes programs to regulate the discharge of dredged and fill material into waters of the United States.

Permits to fill wetlands; to install, replace, or remove culverts; to install, repair, replace, or remove bridges; or to realign streams or water features that are issued by the Florida Department of Environmental Protection or U.S. Army Corps of Engineers under Nationwide, Regional General Permits, or Individual Permits include:

- Nationwide Permits are for ''minor'' impacts to streams and wetlands and do not require an intense review process. The impacts allowed under Nationwide Permits usually include projects affecting stream reaches less than 150 feet (45.72 m) in length, and wetland fill projects up to 0.50 acres (0.2 hectare). Mitigation is usually provided for the same type of wetland or stream impacted and is usually at a 2:1 ratio to offset losses.
- Regional General Permits are for various specific types of impacts that are common to a particular region; these permits will vary based on location in a certain region/State.
- Individual permits are for the larger, higher impact, and more complex projects. These require a complex permit process with multi-agency input and involvement. Impacts in these types of permits are reviewed individually, and the compensatory mitigation chosen may vary depending on the project and types of impacts.

The Clean Water Act regulations ensure proper mitigation measures are applied to minimize the impact of activities occurring in streams and wetlands where the species occurs. These regulations contribute to the conservation of the species by minimizing or mitigating the effects of certain activities on Suwannee alligator snapping turtles and their habitat.

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

Suwannee alligator snapping turtle is included under *Macrochelys* spp., in the CITES Appendix III species list. *Macroclemys [=Macrochelys] temminckii* was listed as an Appendix III species under CITES. At the time the species was added to the list in 2006, the genus was a single species described as *Macroclemys* and synonymous with *Macrochelys* (70 FR 74700, December 16, 2005). Both species, alligator snapping turtle and Suwannee alligator snapping turtle, are protected under this regulation because they were included as a single entity at the time of the CITES Appendix III listing. CITES requires permits for exports of Appendix III species as well as annual reporting; annual reports must include the number of exported individuals of listed species. These requirements help control and document legal, international trade. Thus, Appendix-III listings lend additional support to State wildlife agencies in their efforts to regulate and manage these species, improve data gathering to increase knowledge of trade in the species, and strengthen State and Federal wildlife enforcement activities to prevent poaching and illegal trade.

While the CITES reporting indicates the number of turtles exported with other relevant data, the information required for the export reports does not always accurately identify the source

stock of the exported turtle(s). Most alligator snapping turtles that were exported between 2005 and 2018 were identified as ''wild'' individuals; however, many were likely from farmed parental stock (Service 2018, entire). The discrepancy in reporting the actual source of the internationally exported turtles does not allow us to easily evaluate the impact of export on Suwannee alligator snapping turtles. Additionally, there are no reporting requirements to track domestically traded alligator snapping turtles, which are not included in CITES reporting.

National Wildlife Refuges

Approximately 5 percent of the Suwannee alligator snapping turtle's range includes areas within two National Wildlife Refuges (NWR), Okefenokee in Georgia and Lower Suwannee in Florida. These Refuges are managed by the Service to conserve native wildlife species and their habitats and are protected from future development. Both NWRs have comprehensive conservation plans (CCP) that ensure each NWR is managed to fulfill the purpose(s) for which it was established.

Okefenokee NWR is at the northernmost proximity of the species' range and is a freshwater wetland. There are only a few anecdotal reports within Okefenokee NWR. There have been no systematic surveys conducted within the swamp, so the extent of use by the species of that area has not yet been documented. However, the paucity of documented and anecdotal records from the surrounding areas would indicate that the species is not common or widespread at this location.

The Okefenokee NWR CCP includes a strategy within their wildlife management goal to ''develop and implement surveys to determine distribution and population status of amphibians and reptiles, particularly those species that are threatened, endangered, or species of special concern.'' The CCP also includes an objective to ''identify factors influencing declines in the refuge's fishery by examining water chemistry, groundwater withdrawals, water quality, pH levels, invertebrate populations and the physical environment. Evaluate feasibility of restoring the fish population (Service 2006, pp. 84–86).'' This knowledge would clearly benefit management of the Suwannee alligator snapping turtle.

The Lower Suwannee NWR is at the mouth of the Suwannee River where it feeds into the Gulf of Mexico. Twenty miles of the Suwannee River is within the refuge and is suitable habitat for Suwannee alligator snapping turtles, albeit less so as salinity increases the closer the river gets to the Gulf of Mexico. The species is considered common within the Refuge, and nesting has been confirmed; however, the species is not commonly seen (due to their ability to burrow into the river or creek banks, or sitting on the bottom and staying submerged until surfacing for air is needed), and cryptic coloration when submerged makes detection of the species very difficult (Woodward 2021, pers. comm.). The Lower Suwannee NWR CCP includes management actions that may benefit the species and provides goals for wildlife, habitat, and landscape management. The CCP's objectives and strategies provide that the refuge monitor and manage wildlife populations, manage the habitats for threatened and endangered species and species of special concern in the State of Florida, and promote interagency and private landowner cooperation (Service 2001, pp. 11–22). The Lower Suwannee River NWR provides logistical, operational, in-kind, and financial support to FWC's Suwannee alligator snapping turtle team to conduct surveys on the refuge.

Department of Defense—Moody Air Force Base

Moody Air Force Base is near Valdosta, Georgia, and has many freshwater ponds and a large lake, Mission Lake, that drains into the Grand Bay system. Suwannee alligator snapping turtles do not commonly occur on Moody Air Force Base, but they are occasionally found. The Base's Integrated Natural Resources Management Plan (INRMP) describes *Macrochelys* as occurring on the Base; however, there are no management activities described directly for the species in the INRMP. The Department of Defense ensures INRMPs are consistent with the Sikes Act Improvement Act of 1997, as amended through 2010 (16 United States Code [U.S.C.] 670a *et seq.*), which requires the preparation, implementation, update, and review of an INRMP for each military installation in the United States and its territories with significant natural resources.

State Protections

The Suwannee alligator snapping turtle is State-listed in both Florida and Georgia as a threatened species. The Florida Fish and Wildlife Conservation Commission (FWC) directs staff to evaluate all species listed as Threatened or Species of Special Concern as of September 1, 2010, as required by rule 68A–27.0012 Florida Administrative Code, which makes it illegal to take, possess, or sell the Suwannee alligator snapping turtle, as it is a protected species. Since the original 2010 biological status review, two species of alligator snapping turtle were differentiated based upon genetic and skeletal differences (Thomas et al. 2014, entire), necessitating new biological status reviews of both species. During FWC's 2017 biological assessment of *Macrochelys,* it was determined by the biological review group that *M. suwanniensis* was distinct and warranted listing as Threatened based upon IUCN Red List criteria (Enge et al. 2017. p. 3).

Florida developed a Species Action Plan (SAP) that includes all *Macrochelys* spp. due to their similarity in appearance, vulnerability to deliberate human take, incidental take with fishing gear, pollution, riverine habitat alteration, and nest predation (FWC 2018, p. iii). The objectives of the SAP include: Habitat Conservation and Management, Population Management, Monitoring and Research, Rule and Permitting Intent, Law Enforcement, Incentives and Influencing, Education and Outreach, and Coordination with Other Entities (FWC 2018, pp. 10–27). Implementation of the *Macrochelys* spp. SAP is ongoing (FWC 2018, entire). FWC has established a team of biologists, the Suwannee alligator snapping turtle team, who continue to study the species to better understand the species and population trends.

Both *Macrochelys suwanniensis* and *M. temminckii* are found in Georgia, but their ranges do not overlap. Georgia listed *M. temminckii* as threatened in 1992, which at the time included both species, and continues to cover both species as threatened. State law protects threatened animal species by prohibiting their harassment, capture, killing, sale, and purchase; and destruction of their habitat on public land (Georgia Administrative Code section 391–4–10-.06). In the State's Wildlife Action Plan, the Department of Natural Resources indicates they intend to conduct genetic, taxonomic, and reproductive studies of high-priority species (GDNR 2015, p. D–5). Current State regulations are intended to minimize the impact of poaching and also contribute to the conservation of the species through public outreach. Because of the life history of the species with generation times up to 30 years, recovery from historical impacts to the population take greater time to be rebuild a healthy, sustainable population.

State and Federal Stream Protections (Deadhead Logging)

Structural features within the water are important components of the habitat for Suwannee alligator snapping turtles. Submerged and partially submerged vegetation provide feeding and sheltering areas for all age classes. The structural diversity and channel stabilization created by instream woody debris provides essential habitat for spawning and rearing aquatic species (Bilby 1984, p. 609 and Bisson et al. 1987, p. 143). Snag or woody habitat was reported as the major stable substrate in southeastern Coastal Plain sandy-bottom streams and a site of high invertebrate diversity and productivity (Wallace and Benke 1984, p. 1651). Wood enhances the ability of a river or stream ecosystem to use the nutrient and energy inputs and has a major influence on the hydrodynamic behavior of the river (Wallace and Benke 1984, p. 1643). One component of this woody habitat is deadhead logs, which are sunken timbers from historical logging operations. Deadhead logging is the removal of submerged cut timber from a river or creek bed and banks. However, current State regulations minimize the impact of deadhead logging on Suwannee alligator snapping turtle. Florida allows deadhead logging only with proper permits from the Florida Department of Environmental Protection, the consideration of which includes assessment of impacts on wildlife. Further, the State prohibits deadhead logging in some of the waterways in the species' range. Georgia is not currently processing permits; therefore, deadhead logging is not currently being permitted in any of its waterways.

State and Federal Stream Protections (Buffers and Permits)

A buffer such as a strip of trees, plants, or grass along a stream or wetland naturally filters out dirt and pollution from rainwater runoff before it enters rivers, streams, wetlands, and marshes. This vegetation not only serves as a filter for the aquatic system, but the riparian cover influences microhabitat conditions such as in-stream water temperature and dissolved oxygen levels. These habitat conditions not only influence the distribution and abundance of alligator snapping turtle prey species but also directly affect Suwannee alligator snapping turtles. Moderate temperatures and sufficient dissolved oxygen levels allow the turtles to remain stationary on the stream bottom for longer periods, increasing their ambush foraging opportunities. Loss of riparian vegetation and canopy cover result in increased solar radiation, elevation of stream temperatures, loss of allochthonous (organic material originating from outside the channel) food material, and removal of submerged root systems that provide habitat for alligator snapping turtle prey species (Allan 2004, pp. 266–267).

The Georgia Erosion and Sediment Control Act restricts disturbance and trimming of vegetation within a 25-ft (7.62-m) buffer adjacent to creeks, streams, rivers, saltwater marshes, and most lakes and ponds, and the Georgia Planning Act requires some local governments to adopt a 100-ft (30.48-m) buffer. Georgia also has a non-point water pollution source management program under which the State established and updates a Nonpoint Source Management Plan; this plan sets long-term goals and short-term activities for the State, partners, and stakeholders to address non-point source pollution. Although not focused on buffers per se, the Florida Surface Water Improvement and Management Act addresses statewide non-point source pollution impacts to waterbodies on a landscape scale and partners with Federal, State, and local governments, and the private sector to restore damaged ecosystems and prevent pollution from storm water runoff (Florida Administrative Code, Rule: 62–43.010).

Conservation Measures

In this section, we describe conservation measures in place for Suwannee alligator snapping turtle. Many efforts are directed to *Macrochelys* in general; however, we are describing below those that affect only Suwannee alligator snapping turtle.

Suwannee River Water Management District (SRWMD)

Water conservation measures restricting lawn and landscaping irrigation can benefit the Suwannee alligator snapping turtle by limiting water withdrawal, which directly benefits the turtle through maintaining available habitat and supporting habitat for prey species, and by reducing runoff of fertilizers and other turf management chemicals that could disrupt or alter water chemistry in the streams. The SRWMD manages the water and other related resources within the range of the Suwannee alligator snapping turtle including the Suwannee, Withlacoochee, Alapaha, Santa Fe, and Ichetucknee Rivers within Florida. The agency monitors the water quantity and quality by regular testing and reporting. It also implements water-use restrictions to conserve freshwater resources of springs and rivers within the SRWMD. Unnecessary water use is discouraged, and landscape irrigation restrictions are implemented as needed such as limiting watering to twice per week based on a District water conservation measures that apply to residential landscaping, public or commercial recreation areas, and businesses that are not regulated by a District-issued water use permit (SRWMD 2021, unpaginated). Landscape irrigation accounts for the largest percentage of household water use in the State of Florida. Mandatory lawn and landscape watering measures are in effect throughout the SRWMD. These restrictions contribute to maintaining healthy groundwater level and flows.

Current Condition

The current condition for Suwannee alligator snapping turtle considered the current abundance, current threats, and conservation actions as in the context of what is known about its historical range. In order to determine species-specific population and habitat factors along with threats and conservation actions acting on the species, expert elicitation was used in the absence of available related information. Species experts independently provided relevant information related to the species for which each were familiar. To describe Suwannee alligator snapping turtle's resiliency, redundancy, and representation for the current condition analysis, we assessed the species as a single population, because there is evidence that the turtles may move between the Suwannee and Santa Fe Rivers. The entire species is estimated to have an abundance of 2,000 turtles across its entire range in Georgia and Florida (Service 2020, p. 25).

The current major threats acting on the Suwannee alligator snapping turtle include fishing bycatch, illegal harvest (poaching), nest predation, habitat alteration, and climate change. Other stressors acting on the species include disease, insect parasitism, and contaminants. The species is listed in Florida and Georgia as threatened on each State's threatened and endangered species list. When evaluating range expansion or constriction, recent surveys have confirmed minimal change in the known, limited historical range.

The resiliency of the single Suwannee alligator snapping turtle population is described according to its abundance, threats, and range expansion or contraction. Current abundance was the assessment for current resilience, along with information about current threats, conservation actions, and distribution serving as auxiliary information about

the causes and effects of current versus historical abundances. There is little information with which to make rigorous comparisons between current and historical abundances; however, population depletions historically occurred for consumption and cumulated through the 1970s when turtles and turtle meat were exported regionally for commercial use. Information about the magnitude of the changes in abundance over time come from anecdotal observations by trappers (Pritchard 1989, pp. 74, 76, 80, 83). The historical large-scale removal of large, reproductive turtles from the population for commercial harvest continue to affect the species and its' ability to rebound. Therefore, as a result of the historical and ongoing threats, as described above, the species currently (resiliency) encompasses a single population with an estimated abundance of 2,000 turtles across most of its historical range in Georgia and Florida. Additional information regarding current condition descriptions are included in the SSA report (Service 2020, pp. 26–28).

The home range for Suwannee alligator snapping turtles has been reported between 243 m and 2,013 m (Thomas 2014, pp. 41–42). Turtles are not confined to any part of their range as long as there are no physical barriers; while this species is aquatic with the exception of nesting, these turtles are capable of moving across land if necessary as conditions become unsuitable or resources are diminished. When describing the species' representation, for the purposes of the SSA in evaluating the species' current and future viability, the species consisted of a single representative unit. The best available science regarding the species indicates there is no genetic or environmental condition variation across the species' range that would allow for delineating additional representative units. Representation, which measures a species' adaptive potential in the face of natural or anthropogenic changes, is inherently low for this species because the best available information shows it lacks significant genetic variation within its single population. In addition, there are no physical barriers inhibiting movement within the range that bring about genetic divergence over time.

The Suwannee alligator snapping turtle's redundancy is likewise limited to the single population, with an estimated abundance of 2,000 turtles, across its historical range. Redundancy is related to a species' response to a catastrophic event. While there is only a single population, it is widely distributed across the historical range; therefore, the chance of a catastrophic event affecting the entire species is very low.

In summary, the overall current condition of the species' viability is affected by the residual effects of historical overharvest, historical and ongoing impacts from incidental limb line/bush hook and recreational fishing bycatch and/or hook ingestion, illegal harvest, habitat alteration, nest predation, and the species' life history (*i.e.,* low annual recruitment and delayed sexual maturity). Because of these threats, and particularly the legacy effects of historical harvest, the overall current condition is a single population with an estimated abundance of 2,000 turtles across most of its historical range. The species' resiliency is likely lower than it was historically as a result of the loss of reproductive females and the species' life history (long-lived, late age to sexual maturity, low intrinsic growth rate). However, the species was not well studied historically, so there is little information (anecdotal observations) from with which to make comparisons between historical and current abundance estimates. Redundancy and representation are limited and low, respectively, since the species is considered a single population with little genetic variability or no physical barriers to movement.

Future Condition

The future condition of Suwannee alligator snapping turtle is described in detail in the SSA report (Service 2020, pp. 30–45). When evaluating the species' future viability, we considered the current condition of the species and the threats acting on the species to develop a model to determine future trends of species' estimated abundance. We applied six plausible scenarios that factored in the estimated abundance and threats acting on the species to project the future resiliency of the species (Table 1). Three scenarios consider conservation actions to be applied, while the remaining three scenarios project conditions with no conservation actions.

To assess future conditions and the viability of the Suwannee alligator snapping turtle, we constructed a female-only, stage-structured matrix population model to project the population dynamics over 50 years. Species experts identified five primary potential threats that were likely to reduce stage-specific survival probabilities: Commercial fishing bycatch (includes entanglement, drowning, or otherwise dying from interaction with fishing gear; influenced hatchling, juvenile, and adult survival), recreational fishing bycatch (has the same impacts as commercial fishing bycatch; influenced juvenile and adult survival), hook ingestion (surviving a bycatch event but enduring the lingering effects of an ingested hook; influenced juvenile and adult survival), illegal collection (*i.e.,* poaching; influenced hatchling, juvenile, and adult survival), and subsidized nest predators (influenced nest survival). The subsidized nest predator threat reflects additional nest depredation beyond what would be expected from common nest mesopredators (*e.g.,* raccoons and opossums), with fire ants (*Solenopsis* spp.) being the primary nest predator.

We used the best available information from the literature to parameterize the population matrix and elicited data from species experts to quantify stage-specific initial abundance, the spatial extent of threats, and threat-specific percent reductions to survival. To account for potential uncertainty in the effects of each threat, the six future scenarios were divided along a spectrum: Threat-induced reductions to survival were decreased by 25 percent, were unaltered, or were increased by 25 percent. To simulate conservation actions, the spatial extent of each threat was either left the same or reduced by 25 percent (Table 1). We used a fully stochastic projection model that accounted for uncertainty in demographic parameters to predict future conditions of the Suwannee alligator snapping turtle units under the six different scenarios. We then used the model output to predict the probability of extinction and quasi-extinction. Quasi-extinction is defined here as the probability that the Suwannee alligator snapping turtle population declined to less than 5 percent of the abundance in year one of the simulation (*e.g.,* starting abundance).

TABLE 1—DESCRIPTION OF SIX FUTURE SCENARIOS MODELED FOR THE SUWANNEE ALLIGATOR SNAPPING TURTLE'S SINGLE POPULATION; SCENARIO NAMES ARE GIVEN IN QUOTATION MARKS

	Conservation absent	Conservation present
Decreased Threat Magnitude	"*Decreased Threats*" Impact of threats: *Reduced 25%* Spatial extent of threats: *Expert-elicited.*	"*Decreased Threats +* " Impact of threats: *Reduced 25%* Spatial extent of threats: *Reduced 25%.*
Expert-Elicited Threat Magnitude	"*Expert-Elicited Threats*" Impact of threats: *Expert-elicited* Spatial extent of threats: *Expert-elicited.*	"*Expert-Elicited Threats +* " Impact of threats: *Expert-elicited* Spatial extent of threats: *Reduced 25%.*
Increased Threat Magnitude	"*Increased Threats*" Impact of threats: *Reduced 25%* Spatial extent of threats: *Expert-elicited.*	"*Increased Threats +* " Impact of threats: *Increased 25%* Spatial extent of threats: *Reduced 25%.*

Suwannee alligator snapping turtle abundance was predicted to decline over the next 50 years in all six scenarios. The single population's resiliency measure also declined as abundance declined. Given the high uncertainties parameterized in the model, the species does not have a high likelihood of extinction in the basin within 50 years. However, quasi-extinction is very likely to occur in both decreased threats scenarios (after an average of 35 to 40 years), very likely to occur in both expert-elicited scenarios (after an average of 28 to 35 years), and virtually certain in both increased threats scenarios (after an average of 2 to 30 years). Resiliency continues to decline despite conservation action implementation and prohibitions on harvest. Representation and redundancy were already inherently low and limited, respectively, with a single population representing the species with little to no genetic variation or physical barriers to movement, and this limited redundancy and low representation did not change under any of the scenarios.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Determination of Suwannee Alligator Snapping Turtle Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we found that the species current condition encompasses a single population with an estimated abundance of 2,000 turtles (resiliency) distributed across most of its historical range (redundancy), and therefore, this species is not currently on the brink of extinction. Historical activities that included removal of turtles for consumption through recreational and commercial harvest continue to suppress the viability of the species despite current harvest prohibitions.

There are currently about 2,000 individuals distributed throughout the entire species' range across southern Georgia and northern Florida in the Suwannee River basin (Service 2020, p. 27). Surveys indicate an overall declining population trend; however, recruitment is occurring, and juvenile to adult ratios are consistent with general predictions for long-lived turtles (Folt et al. 2016, p. 29).

The threats that are acting on the species contribute to a decline in the species' viability; however, the species currently occupies much of its historical range. Given the species' longevity, the likely impacts of existing threats, and the current population size, the species is not currently in danger of extinction throughout its range.

Due to the delayed age of sexual maturity and a generation time of about 28 years, the species is slow to recover from historical harvest pressures that reduced the species' viability. As the genus was recently split, the specific impact of large-scale harvest on Suwannee alligator snapping turtles is unknown; however, for *Macrochelys temminckii,* 22 years after *M. temminckii* commercial harvest ended in Georgia, surveys conducted during 2014 and 2015 in Georgia's Flint River revealed no significant change in abundance since 1989 (King et al. 2016, entire). We expect commercial harvest had a similar impact on the Suwannee alligator snapping turtle as it did on the alligator snapping turtle. Thus, despite prohibition of legal harvest of the Suwannee alligator snapping turtle in Georgia and Florida, the Suwannee alligator snapping turtle population will similarly be slow to recover.

The species has experienced severe depletion in the past when the species was heavily harvested, primarily for consumption, prior to prohibitions. This past large-scale removal of large, adult turtles continues to affect the current demographics because the species has a relatively long lifespan, late age to maturity, and low fecundity with production of a single clutch every 1–2 years. The current recruitment rate has declined because of past commercial

harvest practices, which caused the large-scale loss of adult females that have the highest reproductive potential; however, successful reproduction is occurring. The species is not currently in danger of extinction due to commercial harvest; however, the species' resiliency is lower than it was historically as a result of the loss of reproductive females, low juvenile survival, and the species' life-history traits (long-lived, late age to sexual maturity, low intrinsic growth rate). The current estimated population size of 2,000 turtles provides sufficient contribution to the species' current viability through successful reproduction, albeit at a lower recruitment rate than historically, that the species is currently not in danger of extinction. Thus, after assessing the best available information, we conclude that Suwannee alligator snapping turtle is not currently in danger of extinction throughout all of its range, and endangered species status is not appropriate.

When evaluating the future viability of the species, we found that the threats currently acting on the species are expected to continue across its range into the future, resulting in greater reduction of the number and distribution of reproductive individuals. This species is highly dependent upon adult female survival to maintain viable populations. Existing and ongoing threats affecting adult female survival are projected to reduce recruitment to an extent that the single population will continue to decline in the foreseeable future. While there is uncertainty regarding the rate at which population declines will occur, these threats are projected to drive the species towards extinction unless reduced.

The best available information shows that the species' viability is expected to decline with the projected quasi-extinction projected to occur within the next 50 years (Service 2020, p. 41). Based on modeling results, which addressed uncertainty regarding the extent and severity of threats, resiliency is expected to decline dramatically under all scenarios. Time to quasi-extinction for the population in the models was less than 50 years for all scenarios. Regardless of whether the projected timeframe to quasi-extinction is fully accurate, the projected loss of resiliency across the range of the species will place the Suwannee alligator snapping turtle at risk of extinction across all of its range due to the inability of this species to effectively reproduce and maintain viable populations in the coming decades. Based on this information, we determine the appropriate timeframe for assessing whether this species is likely to become in danger of extinction in the foreseeable future is 50 years. Additional information regarding the model and future scenarios is available in the SSA Report, Future Conditions section (Service 2020, pp. 38–44).

Recreational harvest of *Macrochelys* spp. was prohibited in Georgia and Florida, in 1992 and 2009 respectively, and both alligator snapping turtle species were listed as threatened under State law in both Georgia (1992) and Florida (2018). Nest predation and illegal collection are the largest unmitigated threats at this point, although these only affect approximately 10 percent and 30 percent of the range respectively according to expert elicitation. These threats based on the projection of future conditions cause about a 20-year shift in the species' resiliency, indicating these factors will act faster on the generations in the foreseeable future.

There are additional environmental stressors within the Suwannee basin that include development and future climate change impacts (elevated nest temperatures, increased flooding, increased water withdrawals, etc.). Development may increase runoff of contaminants and erosion contributing to degradation of the water quality and suitable aquatic and nesting habitats. These secondary environmental stressors, such as disease, insect parasites, and contaminants from urban and agricultural runoff, would have compounding impacts that would further reduce the likelihood of continued existence of the species in the foreseeable future.

Despite the implementation of the conservation actions described in the Regulatory Mechanisms and Conservation Measures sections of this proposed rule, the lag in the species' response to historical over-harvesting indicates other factors may be acting on the species or additional conservation actions are needed. The future conditions projections, which include three conservation-based scenarios, based on the female-only matrix population model indicate a 95 percent decline in 50 years and quasi-extinction in approximately 40 years under the most optimistic scenario.

The model includes two conservation actions (release of 30 head-started juveniles per year or opportunistic release of 12 adults per year, each for 10 years). However, captive-rearing and release practices, including head-start programs that raise hatchlings through the first couple of years prior to release, have yet to be applied to Suwannee alligator snapping turtles to augment the species within its range. Therefore, given the future projections and threats projected to act on the Suwannee alligator snapping turtle, the species is likely to become in danger of extinction within the foreseeable future, even when considering the most optimistic scenario that includes conservation actions.

Thus, after assessing the best available information, we conclude that Suwannee alligator snapping turtle is likely to become in danger of extinction in the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity*), vacated the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014) that provided that the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Center for Biological Diversity,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for Suwannee alligator snapping turtle, we choose to address the status question first. We consider information pertaining to the geographic distribution of both the species and the threats that the species

faces to identify any portions of the range where the species is endangered.

For Suwannee alligator snapping turtle, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. We examined the following threats: Illegal harvest (poaching), bycatch, habitat alteration, nest predation, and climate change. We also considered the cumulative effects acting on the species with additional stressors such as disease, parasites, and contaminants.

In the current condition analysis, as described in the SSA report, expert elicitation values were provided to better understand the occurrence of the threats and the collective amount of the species' range affected (Service 2020, p. 27). The impact of the threats was estimated as a proxy for the magnitude of the threats in terms of the amount of the entire species' range affected; these estimates do not indicate the spatial distribution of the threats. Rather, they estimate the percentages of the total amount of the species' range affected by each threat noted. Bycatch from incidental hooking affects 30–75 percent of the species' range, illegal harvest affects 20–55 percent of the species' range, and nest predation affects 5–10 percent of the species' range; however, the impact of each threat is spread out and not concentrated. Therefore, we found no concentration of threats in any portion of the Suwannee alligator snapping turtle's range at a biologically meaningful scale. Thus, there are no portions of the species' range where the species has a different status from its rangewide status. Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This finding is consistent with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Determination of Status

Our review of the best scientific and commercial data available indicates that the Suwannee alligator snapping turtle meets the definition of a threatened species. Therefore, we propose to list the Suwannee alligator snapping turtle as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The plan may be revised to address continuing or new threats to the species as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan for Suwannee alligator snapping turtle will be available on our website (*http://www.fws.gov/endangered*), or from our Panama City Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, protective regulations, adjustments to fishing techniques to reduce bycatch, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. Achieving recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If Suwannee alligator snapping turtle is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Florida and Georgia would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Suwannee alligator snapping turtle. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the Suwannee alligator snapping turtle is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for the species. Additionally, we invite you to submit any new information on the species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to

jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph may include but are not limited to management and any other landscape-altering activities on Federal lands administered by the U.S. Fish and Wildlife Service, U.S. Forest Service, and Department of Defense (Moody Air Force Base); issuance of section 404 Clean Water Act permits by the U.S. Army Corps of Engineers; construction and maintenance of roads or highways by the Federal Highway Administration; and dams that produce hydropower by the Federal Energy Regulatory Commission.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. The discussion below regarding protective regulations under section 4(d) complies with our policy.

II. Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states in part that the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of species listed as threatened. The U.S. Supreme Court has noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states in part that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (*see State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), we have developed a proposed rule that is designed to address the Suwannee alligator snapping turtle's specific threats and conservation needs. Although the statute does not require us to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this proposed rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the Suwannee alligator snapping turtle. As discussed under Summary of Biological Status and Threats, we have concluded that the Suwannee alligator snapping turtle is likely to become in danger of extinction within the foreseeable future primarily due to include illegal harvest (poaching), nest predation, habitat alteration, and hook ingestion and entanglement due to bycatch associated with recreational fishing of some species of freshwater fish.

The provisions of this proposed 4(d) rule would promote conservation of the Suwannee alligator snapping turtle by discouraging illegal harvest by prohibiting take and implementing use of best management practices for activities in freshwater wetlands and riparian areas to minimize habitat alteration to the maximum extent practicable. The provisions of this proposed rule include some of the many tools that we would use to promote the conservation of Suwannee alligator snapping turtle. This proposed 4(d) rule would apply only if and when we make final the listing of Suwannee alligator snapping turtle as a threatened species. For purposes of this proposed rule, a captive Suwannee alligator snapping turtle, whether alive or dead, and any part or product, includes only those in captivity at the time of the listing or any turtle that is hatched in captivity.

Provisions of the Proposed 4(d) Rule

Based on the provisions of this 4(d) rule, which provide for the conservation of the species, the following actions would be prohibited across the range of the species: Importing or exporting wild-caught individuals; take (as set forth at 50 CFR 17.21(c)(1) with exceptions as discussed below); possession, sale, delivery, carrying, transporting, or shipping of unlawfully taken specimens from any source; delivering, receiving, transporting, or shipping wild-caught individuals in interstate or foreign commerce in the course of commercial activity; and selling or offering for sale wild-caught or farm brood stock individuals in interstate or foreign commerce. We also include several exceptions to these prohibitions, which along with the prohibitions are set forth under Proposed Regulation Promulgation, below.

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulation at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. This proposed 4(d) rule would provide for the conservation of Suwannee alligator snapping turtle by prohibiting intentional and incidental take, except

as otherwise authorized or permitted. Prohibiting take of the species resulting from activities, including, but not limited to: Illegal harvest (poaching), hook ingestions and entanglement due to bycatch associated with irresponsible commercial and recreational fishing of some species of freshwater fish (particularly as a result of unlawful activities and/or abandonment of equipment), and habitat alteration, will provide for the conservation of the species. The inadequacy of regulatory mechanisms also influences the viability of the species. Regulating these activities under a 4(d) rule would prevent continued declines in population abundance and decrease synergistic, negative effects from other threats; this regulatory approach will provide for the conservation of the species by improving resiliency of the single population.

Prohibitions

Due to the life-history characteristics of Suwannee alligator snapping turtle, specifically delayed maturity, long generation times, and relatively low reproductive output, this species cannot sustain significant collection from the wild, especially of adult females (Reed et al. 2002, pp. 8–12). An adult female harvest rate of more than 2 percent per year is considered unsustainable, and harvest of this magnitude or greater will result in significant local population declines (Reed et al. 2002, p. 9). Although both Florida and Georgia prohibit commercial and recreational harvest of Suwannee alligator snapping turtles, due to the species' demography, the overall population has not recovered from prior extensive loss of individuals due to past over-exploitation. Other protection and conservation measures vary between States.

Habitat alteration is also a concern for the Suwannee alligator snapping turtle, as the species is endemic to the Suwannee River basin and its river ecosystems, including tributary waterbodies and associated wetland habitats (*e.g.,* swamps, lakes, reservoirs, etc.), where structure (*e.g.,* tree root masses, stumps, submerged trees, etc.) and a high percentage of canopy cover is more often selected over open water (Howey and Dinkelacker 2009, p. 589). Suwannee alligator snapping turtles spend the majority of their time in aquatic habitat; overland movements are generally restricted to nesting females and juveniles moving from the nest to water (Reed at al. 2002, p. 5). The primary causes for habitat alteration include actions that change hydrologic conditions to the extent that dispersal and genetic interchange are impeded.

Some examples of activities that may alter the habitat include dredging, deadhead logging, clearing and snagging, removal of riparian cover, channelization, in-stream activities that result in stream bank erosion and siltation (*e.g.,* stream crossings, bridge replacements, flood control structures, etc.), and changes in land use within the riparian zone of waterbodies (*e.g.,* clearing land for agriculture). Deadhead logs and fallen riparian woody debris provide refugia during low-water periods (Enge et al. 2014, p. 40), resting areas for all life stages (Ewert et al. 2006, p. 62), and important feeding areas for hatchlings and juveniles. The species' habitat needs concentrate around a freshwater ecosystem that supplies both shallower water for hatchlings and juveniles and deeper water for adults, with associated forested habitat that is free from inundation for nesting and provides structure within the waterbody.

Based on the provisions of this proposed 4(d) rule, the following actions would be prohibited across the range of the species: Importing or exporting wild-caught individuals; take (as set forth at 50 CFR 17.21(c)(1) with exceptions); possession, sale, delivery, carrying, transporting, or shipping of unlawfully taken specimens from any source; delivering, receiving, transporting, or shipping wild-caught individuals in interstate or foreign commerce in the course of commercial activity; and selling or offering for sale wild-caught or first generation progeny of wild-caught individuals (currently in captivity) in interstate or foreign commerce.

Exceptions to the Prohibitions

We are proposing several exceptions to the prohibitions: Take incidental to any otherwise lawful activity caused by Federal and State captive breeding programs to support conservation efforts for wild populations with permitted, brood stock; construction, operation, and maintenance activities; pesticide and herbicide use; and silviculture practices and forestry activities that implement industry and/or State-approved best management practices accordingly; and maintenance dredging that affects previously disturbed portions of the maintained channel..

Captive Breeding for Conservation—The Service recognizes that captive breeding could provide an avenue for species conservation (*i.e.,* captive rearing, head-starting, and reintroductions) by supplementing depleted populations. This includes head-starting programs, where turtles are bred and raised beyond the hatchling phase to improve survival, then released into the wild. Captive rearing for the purposes of head-starting hatchlings to release back into the wild can help mitigate losses from nest predation and parasitic insects, as well as provide individuals for reintroduction into areas with depleted turtle numbers. Such activities can help bolster population numbers by improving overall juvenile survival and may also increase genetic diversity. When brood stock is legally acquired and permitted, with proper pedigree management and disease surveillance, Federal and State agencies can implement head-start programs without putting undue stress on the wild population.

All captive production programs for the purpose of reintroducing Suwannee alligator snapping turtles to the wild must also develop a Captive Propagation Plan in accordance with the Service's Captive Propagation Policy (65 FR 56916, September 20, 2000). In addition, captive breeding for conservation purposes should apply kinship-based pedigree management to avoid consequences of inbreeding or inadvertently introducing turtles with deleterious alleles into the wild population. Thus, incidental take associated with Federal and State captive-breeding programs to support conservation efforts for wild populations (*i.e.,* head-starting) would be excepted from the prohibitions when conducted using permitted brood stock and following approved turtle husbandry practices in accordance with State regulations and U.S. Fish and Wildlife Service policy

Best Management Practices for Implementing Actions That Occur Near- or In-Stream—Implementing best management practices to avoid and/or minimize the effects of habitat alterations in areas that support Suwannee alligator snapping turtles would provide additional measures for conserving the species by reducing direct and indirect effects to the species. We considered that certain construction, forestry, and pesticide/herbicide management activities that occur near- and in-stream may result in removal of riparian cover or forested habitat, changes in land use within the riparian zone, or stream bank erosion and/or siltation. These actions and activities may have some minimal level of take of the Suwannee alligator snapping turtle, but any such take is expected to be rare and insignificant and is not expected to negatively impact the species' conservation and recovery efforts. Rather, we expect they would have a net beneficial effect on the species.

Construction, operation, and maintenance activities such as installation of stream crossings, replacement of existing in-stream structures (*e.g.,* bridges, culverts, water control structures, boat launches, etc.), operation and maintenance of existing flood control features (or other existing structures), and directional boring, when implemented with industry and State-approved standard best management practices will have minimal impacts to Suwannee alligator snapping turtles and their habitat. In addition, silviculture practices and forestry management activities that follow State-approved best management practices to protect water and sediment quality and stream and riparian habitat will not impair the species' conservation. Lastly, invasive species removal activities, particularly through pesticide and herbicide application, are considered beneficial to the native ecosystem and are likely to improve habitat conditions for the species; therefore, pesticide and herbicide application that follow the chemical label and appropriate application rates would not impair the species' conservation. These activities should have minimal impacts to Suwannee alligator snapping turtles if industry and/or State-approved best management practices are implemented. These activities and management practices should be carried out in accordance with any existing regulations, permit and label requirements, and best management practices to avoid or minimize impacts to the species and its habitat.

Thus, under this proposed 4(d) rule, incidental take associated with the following activities are excepted:

(1) Construction, operation, and maintenance activities that occur near- and in-stream, such as installation of stream crossings, replacement of existing in-stream structures (*e.g.,* bridges, culverts, water control structures, boat launches, etc.), operation and maintenance of existing flood control features (or other existing structures), and directional boring, when implemented with industry and/or State-approved best management practices for construction,

(2) Pesticide and herbicide application that follow the chemical label and appropriate application rates, and,

(3) Silviculture practices and forest management activities that use State-approved best management practices to protect water and sediment quality and stream and riparian habitat.

Maintenance Dredging of Navigable Waterways—We considered that maintenance dredging activities generally disturb the same area of the waterbody in each cycle; thus, there is less likelihood that suitable turtle habitat (*e.g.,* submerged logs, cover, etc.) occurs in the maintained portion of the channel. Accordingly, incidental take associated with maintenance dredging activities that occur within the previously disturbed portion of the navigable waterway is excepted from the prohibitions as long as they do not encroach upon suitable turtle habitat outside the maintained portion of the channel and provide for the conservation of the species.

Tribal employees—When acting in the course of their official duties, Tribal employees designated by the Tribe for such purposes, working in the range of the species, may take alligator snapping turtle for the following purposes:

(A) Aiding or euthanizing sick or injured alligator snapping turtles;

(B) Disposing of a dead specimen; and

(C) Salvaging a dead specimen that may be used for scientific study.

Such take must be reported to the local Service field office within 72 hours, and specimens may be disposed of only in accordance with directions from the Service.

State-licensed wildlife rehabilitation facilities—When acting in the course of their official duties, State licensed wildlife rehabilitation facilities may take alligator snapping turtle for the purpose of aiding or euthanizing sick or injured alligator snapping turtles. Such take must be reported to the local Service field office within 72 hours, and specimens may be retained and disposed of only in accordance with directions from the Service.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: Scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Service in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Service shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve Suwannee alligator snapping turtle that may result in otherwise prohibited take without additional authorization.

We are also considering an exception for incidental take of the Suwannee alligator snapping turtle associated with bycatch from otherwise lawful recreational and commercial fishing. We note that Suwannee alligator snapping turtle bycatch from recreational and commercial fishing with hoop nets and trot lines (and varieties including jug lines, bush hooks, and limb lines) is a concern for the conservation of the species due to its effects on species abundance, particularly in light of the species' life-history traits. However, there is limited information on the magnitude, temporal, and spatial distribution of this threat across the species' range. It is important to ensure that fishing activities take into consideration the need to prevent accidental turtle deaths from the use of such fishing gear, and we will work with the States to identify measures and revisions to existing regulations to reduce bycatch of Suwannee alligator snapping turtle. If we conclude that the measures and/or revisions to existing regulations would provide for the conservation of the species, we may include a provision in the final 4(d) rule excepting incidental take associated with legal recreational or commercial fishing activities for other targeted species, in compliance with State regulations, if such an exception is appropriate in light of comments and new information received. Also, in order to better understand threats associated with bycatch related to otherwise lawful fishing, we are considering adding a provision to the 4(d) rule that will require all injured or dead Suwannee alligator snapping turtles resulting from bycatch from recreational or commercial fishing (for

other targeted species) in accordance with State regulations be reported to the Service within 72 hours. We specifically request comments on these provisions we are considering.

Future conservation efforts may be appropriate through advances in fishing gear technology that implement effective turtle escape or exclusion devices for hoop nets or modified trot lines (including limb lines and jug lines) that would reduce or eliminate turtle bycatch. Thus, we are requesting information from the public, especially the commercial and recreational fishing communities, to design a turtle escape or exclusion device and modified trot line techniques that would effectively eliminate or significantly reduce bycatch of alligator snapping turtles from recreational fishing.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the Suwannee alligator snapping turtle. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service, where appropriate. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that the Service could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested, above).

Since we are proposing a threatened status for the Suwannee alligator snapping turtle and this proposed rule outlines the protections in section 9(a)(1) of the Act that we are extending to this species pursuant to section 4(d), we are identifying those activities that would or would not constitute a violation of either section 9(a)(1), and accordingly, this proposed 4(d) rule. Based on the best available information, at this time, the excepted activities as discussed above would not be considered to result in a violation this 4(d) rule. On the other hand, based on the best available information, if this proposed rule is adopted, the following actions may potentially result in a violation this rule:

(1) Unauthorized handling, collecting, possessing, selling, delivering, carrying, or transporting of the Suwannee alligator snapping turtle, including interstate transportation across State lines and import or export across international boundaries.

(2) Unreported incidents of dead or injured turtles from bycatch associated with commercial or recreational fishing in accordance with State regulations; or bycatch due to fishing activities not in accordance with State regulations.

(3) Non-release of incidentally hooked or entangled turtles from commercial or recreational fishing gear, considering human safety concerns;

(4) Destruction/alteration of the species' habitat by removing deadhead logs or changing the hydrology of an occupied waterbody not in according to local, State, or Federal regulations or relevant best management practices; and

(5) Discharge of chemicals or fill material into any waters in which Suwannee alligator snapping turtle is known to occur.

Questions regarding whether specific activities would constitute a violation of this rule should be directed to the Panama City Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

III. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for

a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

Increased Degree of Threat to the Suwannee Alligator Snapping Turtle

After evaluating the status of the species and considering the threats acting on the species, we find the designation of critical habitat would not be prudent for Suwannee alligator snapping turtle because the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species. Many species of aquatic turtles, including alligator snapping turtle species, are collected for the pet trade and personal consumption in the United States and internationally.

The Suwannee alligator snapping turtle is declining throughout its range as a consequence of factors including collection of live adult turtles from the wild for human consumption and for the pet trade. Adult alligator snapping turtles are harvested for local human consumption and for use in the specialty meat trade both domestically and internationally. Prior to 2006, up to 23,780 *M. temminckii* per year were exported from the United States (70 FR 74700, December 16, 2005). Harvest and trade of mature, breeding adults can rapidly become unsustainable because of the species' life history and reproductive strategy. When recreational and commercial harvest were both allowed for Suwannee alligator snapping turtles, the over-exploitation over several decades severely depleted many local subpopulations and altered the demographic structure (70 FR 74701, December 16, 2005).

Designation of critical habitat requires the publication of maps and a narrative description of specific critical habitat areas in the **Federal Register**. We are concerned that designation of critical habitat would more widely announce the exact locations of Suwannee alligator snapping turtles and their highly suitable habitat that may facilitate poaching and contribute to further declines of the species' viability. Moreover, as species become rarer and more difficult to obtain, the monetary value increases, thus driving increased collection pressure on remaining wild individuals. We anticipate that listing Suwannee alligator snapping turtle under the Act may promote further interest in black market sales of the turtles and increase the likelihood that Suwannee alligator snapping turtles will be sought out for turtle meat consumption and also for the pet trade as demand rises. The removal of the species by taking is expected to increase if we identify critical habitat; thus, we find that designation of critical habitat for Suwannee alligator snapping turtle is not prudent.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

Upon the initiation of the SSA process, we contacted Tribes within the range of Suwannee alligator snapping turtle and additional Tribes of interest to inform them of our intent to complete an SSA for the species that would inform the species' 12-month finding. In addition, as described above under *Tribal employees,* the proposed rule would authorize certain take by Tribes. As we move forward with this listing process, we will continue to consult with Tribes on a government-to-government basis as necessary.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* in Docket No. FWS–R4–ES–2021–0007 and upon request from the Panama City Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Service's Species Assessment Team and the Panama City Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11(h), add an entry for ''Turtle, Suwannee alligator snapping''

to the List of Endangered and Threatened Wildlife in alphabetical order under REPTILES to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
REPTILES				
*	*	*	*	*
Turtle, Suwannee alligator snapping.	*Macrochelys suwanniensis* ...	Wherever found	T	[**Federal Register** CITATION OF THE FINAL RULE]; 50 CFR 17.42(k).[4d]
*	*	*	*	*

■ 3. Amend § 17.42 by adding paragraph (k) to read as set forth below:

§ 17.42 Special rules—reptiles.

* * * * *

(k) Suwannee alligator snapping turtle (*Macrochelys suwanniensis*)—(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to Suwannee alligator snapping turtle. Except as provided under paragraph (k)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

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

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

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife.

(iii) Take as set forth at § 17.31(b).

(iv) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

(v) Take incidental to an otherwise lawful activity caused by:

(A) Federal and State captive-breeding programs to support conservation efforts for wild populations that use permitted brood stock and approved turtle husbandry practices in accordance with State regulations and U.S. Fish and Wildlife Service policy.

(B) Construction, operation, and maintenance activities that occur near- and in-stream, such as installation of stream crossings, replacement of existing in-stream structures (*e.g.,* bridges, culverts, water control structures, boat launches, etc.), operation and maintenance of existing flood control features (or other existing structures), and directional boring, when implemented with industry and/or State-approved best management practices for construction.

(C) Pesticide and herbicide application that follow the chemical label and appropriate application rates.

(D) Silviculture practices and forest management activities that use State-approved best management practices to protect water and sediment quality and stream and riparian habitat.

(E) Maintenance dredging activities that remain in the previously disturbed portion of the maintained channel.

(vi) When acting in the course of their official duties, Tribal employees designated by the Tribe for such purposes may take Suwannee alligator snapping turtle for the following purposes:

(A) Aiding or euthanizing sick or injured Suwannee alligator snapping turtles;

(B) Disposing of a dead specimen; and

(C) Salvaging a dead specimen that may be used for scientific study. Such take must be reported to the local Service field office within 72 hours, and specimens may be disposed of only in accordance with directions from the Service.

(vii) State-licensed wildlife rehabilitation facilities, when acting in the course of their official duties, may take Suwannee alligator snapping turtle for the purpose of aiding or euthanizing sick or injured Suwannee alligator snapping turtles. Such take must be reported to the local Service field office within 72 hours and specimens may be retained and disposed of only in accordance with directions from the Service.

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–06946 Filed 4–6–21; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 86, No. 65
Wednesday, April 7, 2021

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.

CIVIL RIGHTS COMMISSION

Notice of Public Meeting of the South Carolina 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 South Carolina Advisory Committee (Committee) will hold a meeting via-teleconference on Thursday, May 6, 2021, at 12 p.m. (EST) the purpose of the meeting is to for the Committee to discuss the release of its report on Subminimum Wages for People with Disabilities in South Carolina.

DATES: The meeting will be held on:

- Thursday, May 6, 2021 at 12:00 p.m. Eastern Time, *https://tinyurl.com/6crvrkcn*

or Join by phone
800–360–9505 USA Toll Free

For Additional Information Contact: Barbara Delaviez at *bdelaviez@usccr.gov* or (202) 539–8246.

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 Carolyn Allen at *callen@usccr.gov* in the Regional Program Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Program Unit Office at (202) 539–8246.

Records generated from this meeting may be inspected and reproduced at the Regional Program Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzmPAAQ* under the Commission on Civil Rights, South Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Program Unit at the above email or phone number.

Agenda

1. Roll Call
2. Discussion: Release of report on Subminimum Wages for People with Disabilities in SC.
3. Open Session
4. Adjourn

Dated: April 1, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–07110 Filed 4–6–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–815]

Light-Walled Rectangular Pipe and Tube From Turkey: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that there were no suspended entries of merchandise subject to the antidumping duty (AD) order on light-walled rectangular pipe and tube (LWRPT) from Turkey during the period May 1, 2019, through April 30, 2020 from any of the companies under review. Interested parties are invited to comment on these preliminary results.

DATES: Applicable April 7, 2021.

FOR FURTHER INFORMATION CONTACT: Thomas Hanna, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0835.

SUPPLEMENTARY INFORMATION:

Background

On May 28, 2020, domestic interested party Nucor Tubular Products Inc. (Nucor) requested an administrative review of the AD order on LWRPT from Turkey.[1] The period of review (POR) is May 1, 2019, through April 30, 2020. On July 10, 2020, Commerce initiated the requested review with respect to six companies: Cinar Boru Profil Sanayi ve Ticaret A.S., Intermetal International Metal L.L.C., Parker Steel Company, Inc., Parker Steel International, Tata Steel Nederland Tubes BV, and Van Leeuwen Precisie B.V.[2]

Commerce queried U.S. Customs and Border Protection (CBP) data to identify suspended entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the POR from the companies under review. On July 27, 2020,

[1] *See* Nucor's Letter, ''Light-Walled Rectangular Pipe and Tube from Turkey: Request for Administrative Review,'' dated May 28, 2020.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 41540 (July 10, 2020).

Commerce placed the results of its CBP data query on the record.[3] The CBP data show no suspended entries of subject merchandise during the POR associated with the companies under review.[4] Commerce requested comments from interested parties on the CBP data.[5] No party commented on the CBP data or on respondent selection.

On November 25, 2020, Nucor alleged that entries of merchandise during the POR that may be subject merchandise were misreported as entries of non-subject merchandise.[6] Nucor provided information which it believes supports its allegation.[7] Nucor requested that Commerce forward such information to CBP for further investigation.

Scope of the Order

The merchandise subject to this order is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm. The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.5000 and 7306.61.7060. While HTSUS subheadings are provided for convenience and CBP's customs purposes, our written description of the scope of the order is dispositive.

Methodology

As noted above, CBP data show that there were no suspended entries of subject merchandise during the POR associated with the six companies under review. Section 751(a)(2) of the Tariff Act of 1930, as amended (the Act), instructs Commerce that, when conducting an administrative review, it is to determine the dumping margin for entries during the relevant period and establish a revised cash deposit rate for estimated antidumping duties for future entries of subject merchandise. Given that the evidence shows that there are no suspended entries of subject merchandise during the POR from the six companies under review, we have not calculated or otherwise determined a weighted-average dumping margin or revised the cash deposit rate for these six companies in this administrative review.

Allegation of Misreported Entries

Nucor has alleged that certain merchandise from companies under review that was entered into the United States during the POR was misreported to CBP as non-subject merchandise when it may be subject merchandise. Nucor requested that Commerce refer this matter, and the evidence that it provided in support of its claim, to CBP for investigation.

Commerce is committed to preventing the evasion of antidumping duties and takes allegations, such as the one made by Nucor, seriously. The issue raised by Nucor falls within the jurisdiction of CBP and is best addressed by CBP.[8] Consequently, concurrent with this notice, we have referred this allegation of potential misclassification and/or fraud to CBP with the supporting evidence provided by Nucor.

Preliminary Results of Review

Commerce has not calculated a weighted-average dumping margin for any of the six companies for which this review was initiated because there are no suspended entries of subject merchandise during the POR for these six companies.

Disclosure and Public Comment

Because Commerce has not calculated weighted-average dumping margins for these preliminary results, there are no calculations to disclose to interested parties.

Interested parties are invited to comment on these preliminary results of the review. Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs no later than 30 days after the date of publication of this notice in the **Federal Register**. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.[9] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each brief: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[10] Executive summaries should be limited to five pages total, including footnotes.[11] Case and rebuttal briefs should be filed using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[12] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[13]

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the date of publication of this notice in the **Federal Register**. Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS, by the deadline noted above. If a hearing is requested, Commerce will notify interested parties of the hearing date and time. Requests for a hearing should contain: (1) The requesting party's name, address, and telephone number; (2) the number of individuals from the requesting party's firm that will attend the hearing; and (3) a list of the issues the party intends to discuss at the hearing. Issues raised in the hearing will be limited to those issues raised in the respective case and rebuttal briefs.

Unless we extend the deadline for the final results of this review, we intend to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in their briefs, within 120 days of the date of publication of this notice in the **Federal Register**.[14]

Assessment

Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries in accordance with

[3] *See* Memorandum, ''Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Turkey: Automated Commercial System Shipment Query,'' dated July 27, 2020.

[4] *Id.*

[5] *Id.*

[6] *See* Nucor's Letter, ''Light-Walled Rectangular Pipe and Tube from Turkey: Request to Refer Information to U.S. Customs and Border Protection for Non-Payment of Duties—Submission of Other Factual Information,'' dated November 25, 2020.

[7] *Id.*

[8] *See Globe Metallurgical Inc.,* v. *United States,* 722 F. Supp. 2d 1372, 1381 (CIT 2010).

[9] *See* 19 CFR 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *Id.*

[12] *See* 19 CFR 351.303.

[13] *See Temporary Rule.*

[14] *See* section 751(a)(3)(A) of the Act; and 19 CFR 351.213(h)(1).

19 CFR 351.212(b)(1). For any entries found to be associated with the six companies under review, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction, consistent with Commerce's reseller policy.[15]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all entries of LWRPT from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the six companies under review will continue to be equal to the company-specific weighted-average dumping margin established for each company in the most recently completed segment of this proceeding (except, if the rate is *de minimis, i.e.,* less than 0.5 percent, then the cash deposit will be zero percent) or, if a company-specific weighted-average dumping margin has not been established for the company, the cash deposit rate will continue to be equal to the all-others rate; (2) for merchandise exported by a company not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for that company in the most recently completed segment of this proceeding in which the company was included; (3) if the exporter of the subject merchandise does not have its own rate but the producer has its own rate, the cash deposit rate will be the rate established in the most recently completed segment of the proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 27.04 percent, the all-others rate established in the less-than-fair-value investigation.[16]

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h)(1).

Dated: April 1, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–07171 Filed 4–6–21; 8:45 am]

BILLING CODE 3510–DS–P

[15] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[16] *See Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Turkey,* 73 FR 19814 (April 11, 2008).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–714–001; C–821–825]

Phosphate Fertilizers From the Kingdom of Morocco and the Russian Federation: Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on the affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing its countervailing duty orders on phosphate fertilizers from the Kingdom of Morocco (Morocco) and the Russian Federation (Russia).

DATES: Applicable April 7, 2021.

FOR FURTHER INFORMATION CONTACT: Janae Martin (Morocco) or George Ayache (Russia), 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) 482–0238 or (202) 482–2623, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 2021, Commerce published its affirmative final determinations in the countervailing duty investigations of phosphate fertilizers from Morocco and Russia.[1] On March 31, 2021, the ITC notified Commerce of its affirmative final determinations, pursuant to sections 705(b)(1)(A)(i) and 705(d) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured by reason of subsidized imports of phosphate fertilizers from Morocco and Russia.[2]

Scope of the Orders

The products covered by these orders are phosphate fertilizers from Morocco and Russia. For a full description of the scope of these orders, *see* the Appendix to this notice.

Countervailing Duty Orders

On March 31, 2021, in accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified Commerce of its final determinations in these investigations, in which it found that an industry in the United States is materially injured by reason of subsidized imports of phosphate fertilizers from Morocco and Russia.[3] In accordance with section 705(c)(2) of the Act, Commerce is issuing these countervailing duty orders.

Therefore, in accordance with section 706(a) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, countervailing duties on unliquidated entries of phosphate fertilizers from Morocco and Russia entered, or withdrawn from warehouse, for consumption on or after November 30, 2020, the date of publication of the *Preliminary Determinations* in the **Federal Register**,[4] but will not include

[1] *See Phosphate Fertilizers from the Kingdom of Morocco: Final Affirmative Countervailing Duty Determination,* 86 FR 9482 (February 16, 2021) (*Morocco Final Determination*); *see also Phosphate Fertilizers from the Russian Federation: Final Affirmative Countervailing Duty Determination,* 86 FR 9479 (February 16, 2021) (*Russia Final Determination*).

[2] *See* ITC Notification Letter, Investigations, Inv. Nos. 701–TA–650–651 (Final) (March 31, 2021).

[3] *Id.*

[4] *See Phosphate Fertilizers from the Kingdom of Morocco: Preliminary Affirmative Countervailing Duty Determination,* 85 FR 76522 (November 30, 2020); *see also Phosphate Fertilizers from the Russian Federation: Preliminary Affirmative Countervailing Duty Determination,* 85 FR 76524

Continued

entries occurring after the expiration of the provisional measures period and prior to the date of publication of the ITC's final determinations in the **Federal Register**, as further described below.

Suspension of Liquidation

In accordance with section 706 of the Act, Commerce will direct CBP to reinstitute the suspension of liquidation of phosphate fertilizers from Morocco and Russia, effective the date of publication of the ITC's notice of final determinations in the **Federal Register**, and to assess, upon further instruction by Commerce pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. On or after the date of publication of the ITC's final injury determinations in the **Federal Register**, CBP must require, at the same time as importers would deposit estimated normal customs duties on this merchandise, a cash deposit equal to the subsidy rates noted below. These instructions suspending liquidation will remain in effect until further notice. The all-others rate applies to all producers or exporters not specifically listed below.

Company	Subsidy rate (percent)
Morocco:	
OCP S.A.[5]	19.97
All Others	19.97
Russia:	
Industrial Group Phosphorite LLC[6]	47.05
Joint Stock Company Apatit[7]	9.19
All Others	17.20

Provisional Measures

Section 703(d) of the Act states that the suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months. In the underlying investigations, Commerce published the *Preliminary Determinations* on November 30, 2020.[8] Therefore, entries of phosphate fertilizers from Morocco and Russia made on or after March 30, 2021, and prior to the date of publication of the ITC's final determinations in the **Federal Register**, are not subject to the assessment of countervailing duties due to Commerce's discontinuation of the suspension of liquidation.

In accordance with section 703(d) of the Act, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of phosphate fertilizers from Morocco and Russia entered, or withdrawn from warehouse, for consumption on or after March 30, 2021, the date on which the provisional countervailing duty measures expired, through the day preceding the date of publication of the ITC final injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC final injury determinations in the **Federal Register**.

Notifications to Interested Parties

This notice constitutes the countervailing duty orders with respect to phosphate fertilizers from Morocco and Russia pursuant to section 706(a) of the Act. Interested parties can find a list of countervailing duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: April 1, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The merchandise covered by these orders is phosphate fertilizers in all physical forms (*i.e.,* solid or liquid form), with or without coating or additives such as anti-caking agents. Phosphate fertilizers in solid form are covered whether granular, prilled (*i.e.,* pelletized), or in other solid form (*e.g.,* powdered).

The covered merchandise includes phosphate fertilizers in the following forms: ammonium dihydrogenorthophosphate or monoammonium phosphate (MAP), chemical formula NH4H2PO4; diammonium hydrogenorthophosphate or diammonium phosphate (DAP), chemical formula (NH4)2HPO4; normal superphosphate (NSP), also known as ordinary superphosphate or single superphosphate, chemical formula Ca(H2PO4)2-CaSO4; concentrated superphosphate, also known as double, treble, or triple superphosphate (TSP), chemical formula Ca(H2PO4)2-H2O; and proprietary formulations of MAP, DAP, NSP, and TSP.

The covered merchandise also includes other fertilizer formulations incorporating phosphorous and non-phosphorous plant nutrient components, whether chemically-bonded, granulated (*e.g.,* when multiple components are incorporated into granules through, *e.g.,* a slurry process), or compounded (*e.g.,* when multiple components are compacted together under high pressure), including nitrogen, phosphate, sulfur (NPS) fertilizers, nitrogen, phosphorous, potassium (NPK) fertilizers, nitric phosphate (also known as nitrophosphate) fertilizers, ammoniated superphosphate fertilizers, and proprietary formulations thereof that may or may not include other nonphosphorous plant nutrient components. For phosphate fertilizers that contain non-phosphorous plant nutrient components, such as nitrogen, potassium, sulfur, zinc, or other non-phosphorous components, the entire article is covered, including the non-phosphorous content, provided that the phosphorous content (measured by available diphosphorous pentaoxide, chemical formula P2O5) is at least 5% by actual weight.

Phosphate fertilizers that are otherwise subject to these orders are included when commingled (*i.e.,* mixed or blended) with phosphate fertilizers from sources not subject to these orders. Phosphate fertilizers that are otherwise subject to these orders are included when commingled with substances other than phosphate fertilizers subject to these orders (*e.g.,* granules containing only non-phosphate fertilizers such as potash or urea). Only the subject component of such commingled products is covered by the scope of these orders. The following products are specifically excluded from the scope of these orders:

(1) ABC dry chemical powder preparations for fire extinguishers containing MAP or DAP in powdered form;

(2) industrial or technical grade MAP in white crystalline form with available P2O5 content of at least 60% by actual weight;

(3) industrial or technical grade diammonium phosphate in white crystalline form with available P2O5 content of at least 50% by actual weight;

(4) liquid ammonium polyphosphate fertilizers;

(5) dicalcium phosphate, chemical formula CaHPO4;

(6) monocalcium phosphate, chemical formula CaH4P2O8;

(7) trisodium phosphate, chemical formula Na3PO4;

(8) sodium tripolyphosphate, chemical formula Na5P3O10;

(9) prepared baking powders containing sodium bicarbonate and any form of phosphate;

(November 30, 2020) (collectively, *Preliminary Determinations*).

[5] Commerce found the following companies to be cross-owned with OCP S.A.: Jorf Fertilizers Company I, Jorf Fertilizers Company II, Jorf Fertilizers Company III, Jorf Fertilizers Company IV, Jorf Fertilizers Company V, and Maroc Phosphore. *See Morocco Final Determination.*

[6] Commerce found the following companies to be cross-owned with Industrial Group Phosphorite LLC: Mineral and Chemical Company EuroChem, JSC; NAK Azot, JSC; EuroChem Northwest, JSC; Joint Stock Company Kovdorksy GOK; EuroChem-Energo, LLC; EuroChem-Usolsky Potash Complex, LLC; EuroChem-BMU, LLC; JSC Nevinnomyssky Azot; and EuroChem Trading Rus, LLC. *See Russia Final Determination.*

[7] Commerce found the following companies to be cross-owned with Joint Stock Company Apatit: PhosAgro PJSC; PhosAgro-Belgorod LLC; PhosAgro-Don LLC; PhosAgro-Kuban LLC; PhosAgro-Kursk LLC; PhosAgro-Lipetsk LLC; PhosAgro-Orel LLC; PhosAgro-Stavropol LLC; PhosAgro-Volga LLC; PhosAgro-SeveroZapad LLC; PhosAgro-Tambov LLC; and Martynovsk AgrokhimSnab LLC. *See Russia Final Determination.*

[8] *See Preliminary Determinations.*

(10) animal or vegetable fertilizers not containing phosphate fertilizers otherwise covered by the scope of these orders;

(11) phosphoric acid, chemical formula H3PO4.

The Chemical Abstracts Service (CAS) numbers for covered phosphate fertilizers include, but are not limited to: 7722–76–1 (MAP); 7783–28–0 (DAP); and 65996–95–4 (TSP). The covered products may also be identified by Nitrogen-Phosphate-Potash composition, including but not limited to: NP 11–52–0 (MAP); NP 18–46–0 (DAP); and NP 0–46–0 (TSP).

The covered merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3103.11.0000; 3103.19.0000; 3105.20.0000; 3105.30.0000; 3105.40.0010; 3105.40.0050; 3105.51.0000; and 3105.59.0000. Phosphate fertilizers subject to these orders may also enter under subheadings 3103.90.0010, 3105.10.0000, 3105.60.0000, 3105.90.0010, and 3105.90.0050. Although the HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2021–07170 Filed 4–6–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA949]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 77 HMS Hammerheads Stock ID scoping webinar.

SUMMARY: The SEDAR 77 assessment of the Atlantic stock of hammerheads will consist of a stock identification (ID) process, data webinars/workshop, a series of assessment webinars, and a review workshop.

DATES: The SEDAR 77 HMS Hammerheads Stock ID scoping webinar has been scheduled for Wednesday, May 26, 2021, from 12 p.m. until 3 p.m. ET.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Registration is available online at: *https://attendee.gotowebinar.com/register/6129615010651291407.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4371; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 77 HMS Hammerheads Stock ID scoping webinar are as follows:

- Participants will use review genetic studies, growth patterns, and any other relevant information on Hammerhead stock structure.
- Participants will make recommendations on biological stock structure and define the unit stock or stocks to be addressed through this assessment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: April 2, 2021.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–07148 Filed 4–6–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA992]

Virtual Meetings of the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas' Species Working Groups

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

ACTION: Notice of Advisory Committee's Species Working Group meetings.

SUMMARY: The Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT) is announcing the convening of its spring meeting.

DATES: The Advisory Committee will meet in two open sessions, on April 21, 2021, 1 p.m. to 4 p.m. EDT and May 21, 2021, 1 p.m. to 4 p.m. EDT. The Species Working Groups will separately convene several closed session meetings, which will take place between May 17 and May 18, 2021, and are not open to the public.

ADDRESSES: Please register to attend the open sessions at: *https://forms.gle/tEY9ZsWmx6X2FyvN9.* Instructions

will be emailed to registered meeting participants before the meetings occur.

FOR FURTHER INFORMATION CONTACT: Rachel O'Malley, Office of International Affairs and Seafood Inspection, 301–427–8373 or at *rachel.o'malley@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in open sessions to receive and discuss information on outcomes of ICCAT's 2020 correspondence process, ICCAT meetings in 2021, and relevant NMFS research and monitoring activities. The public will have access to these open sessions. Agendas for each session are available from the Committee's Executive Secretary upon request (see **FOR FURTHER INFORMATION CONTACT**).

The Committee will convene separate closed session Species Working Groups between May 17 and May 18, 2021, to discuss sensitive information relating to upcoming ICCAT negotiations regarding Atlantic highly migratory species conservation and management. These sessions are not open to the public, but the results of the Species Working Groups' discussions will be reported to the full Advisory Committee during the Committee's open session on May 21, 2021.

Special Accommodations

The virtual meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to Rachel O'Malley at 301–427–8373 or *rachel.o'malley@noaa.gov* at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: April 2, 2021.

Alexa Cole,

Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2021–07180 Filed 4–6–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA910]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Groundfish Endangered Species Workgroup will hold a three-day meeting via webinar, which is open to the public.

DATES: The online meeting will be held Monday, April 26, 2021 through Wednesday, April 28, 2021, from 9 a.m. to 1 p.m. each day, Pacific Daylight Time, or until business for the day has been completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Todd Phillips, Staff Officer, Pacific Council; telephone: (503) 820–2426; email: *todd.phillips@noaa.gov.*

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to review recent information on take of species listed under the Endangered Species Act in the Pacific Coast groundfish fishery (other than salmonids). The workgroup will provide recommendations to the Pacific Council on any additional mitigation measures needed to meet the requirements of the Act, as implemented through the terms and conditions in the most recent biological opinions for the fishery.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 business days prior to the meeting date.

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

Dated: April 2, 2021.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–07151 Filed 4–6–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA932]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 72 Assessment Webinar I for Gulf of Mexico gag grouper.

SUMMARY: The SEDAR 72 stock assessment process for Gulf of Mexico gag grouper will consist of a series of data and assessment webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 72 Assessment Webinar I will be held April 22, 2021, from 1 p.m. until 3 p.m., Eastern Time.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT** below) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for

assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Assessment Webinar are as follows:

- Using datasets and initial assessment analysis recommended from the data webinars, panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.
- Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: April 2, 2021.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–07149 Filed 4–6–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA954]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Surfclam and Ocean Quahog Advisory Panel will hold a public meeting.

DATES: The meeting will be held on Thursday, April 22, 2021, from 1 p.m. until 3 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Details on the proposed agenda, connection information, and briefing materials will be posted at the MAFMC's website: *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop a fishery performance report by the Council's Surfclam and Ocean Quahog Advisory Panel. An agenda and background documents will be posted at the Council's website (*www.mafmc.org*) prior to the meeting. The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Kathy Collins, (302) 526–5253, at least 5 days prior to the meeting date.

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

Dated: April 2, 2021.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–07150 Filed 4–6–21; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2021–0002]

Privacy Act of 1974; System of Records

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of a modified system of records.

SUMMARY: The Bureau of Consumer Financial Protection (CFPB or Bureau) established CFPB.029, Public Health and Safety System, a system of records under the Privacy Act of 1974. This system of records maintains information collected in response to a public health emergency or similar health and safety incident, such as a pandemic, epidemic, or man-made emergency, that is necessary to ensure a safe and healthy environment for individuals who are occupying CFPB facilities, attending CFPB-sponsored events, or otherwise engaged in official business on behalf of the Bureau. This notice was previously published in the **Federal Register** for public comment. Upon receipt and consideration of a public comment, the Supplementary Information is being edited to clarify legal requirements that apply to the system.

DATES: This modified system of records will be made effective upon publication of this notice as there are no changes to, or addition of routine uses.

ADDRESSES: You may submit comments, identified by the title and docket number (*see* above Docket No. CFPB–2021–0002), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: privacy@cfpb.gov.*
- *Mail/Hand Delivery/Courier:* Tannaz Haddadi, Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier.

All submissions must include the agency name and docket number for this notice. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10

a.m. and 5 p.m. Eastern Time. At that time, you can make an appointment to inspect comments by telephoning (202) 435–7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Tannaz Haddadi, Chief Privacy Officer, at (202) 435–7058. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The Bureau is establishing CFPB.029, Public Health and Safety System, a system of records under the Privacy Act of 1974. The Bureau is committed to providing all Bureau staff, visitors, and occupants of its facilities with a safe and healthy environment. To ensure and maintain the safety of all occupants during a public health emergency or similar health and safety incident, such as pandemic, epidemic, or man-made emergency, the Bureau may develop and institute additional safety measures that requires the collection of personal information. During public health emergencies, such as a pandemic or epidemic, the Bureau may need to institute safety measures such as tracing potential exposures and notifying individuals who may have come into contact with pathogens or other contagious agents or preventing the threat of or further exposure. These measures may require Bureau staff, visitors, and other occupants of CFPB spaces to provide information about such exposures or their general health before being allowed access or continue to access a Bureau facility, space, or worksite. During man-made emergencies, such as the intentional or accidental release of hazardous materials or agents (*e.g.,* chemical, biological, radioactive, or nuclear materials), the Bureau may institute similar measures to trace potential exposure prior to granting staff, visitors, or other occupants access or continued access to Bureau facilities in an effort to prevent further exposure. Information will be collected, maintained, and disclosed in accordance with applicable law, regulations, and statutes, including, but not limited to, the Rehabilitation Act, the Genetic Information Nondiscrimination Act, and regulations and guidance published by the U.S. Occupational Safety and Health Administration, the U.S. Equal Employment Opportunity Commission, and the U.S. Centers for Disease Control and Prevention.

SYSTEM NAME AND NUMBER:

CFPB.029, Public Health and Safety System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Bureau of Consumer Financial Protection Headquarters at 1700 G Street NW, Washington, DC 20552.

SYSTEM MANAGER(S):

Chief Operating Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 668; E.O. 12196, *Occupational Safety and Health Programs for Federal Employees* (Feb. 26, 1980); E.O. 12656, *Assignment of Emergency Preparedness Responsibilities* (Nov. 18, 1988); 29 U.S.C. 791 *et seq.;* 12 U.S.C. 5492.

PURPOSE(S) OF THE SYSTEM:

The information in this system is collected to maintain a safe and healthy environment in Bureau spaces and facilities and to protect Bureau staff, visitors, or occupants from risks associated with a public health emergency or similar health and safety incident, such as pandemic, epidemic, or man-made emergency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include Bureau staff (political appointees, employees, contractors, consultants, interns, and volunteers), visitors, and occupants who access or seek to access Bureau facility, space, or worksite or individuals otherwise engaged in official business on behalf of the Bureau. The system also covers individuals identified as emergency contacts for Bureau staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system maintains information collected about Bureau staff, visitors, and occupants that will help the Bureau trace potential exposures and notify individuals who may have come into contact with a pathogen, contagious agent, or other hazardous materials due to a public health or man-made emergency. The information collected and maintained by the system about those individuals may include, but is not limited to, their name, contact information, employee identification number (if applicable), the dates when they visited the facility, space, or worksite, whether they may have potentially come into contact with the pathogen or other hazardous materials or agents, dates the Bureau was made aware of the exposure, the locations that they visited within the facility, space, or worksite (*e.g.,* office and/or cubicle number), and the duration of time spent in the facility, space, or worksite. The Bureau may collect information to assess or ensure the health and safety of the facility, space, or worksite prior to allowing access to Bureau staff, visitors, or occupants as a result of these emergencies. This information may vary depending on the nature of the specific emergency or event and may include, but is not limited to recent travel dates and location, temperature, symptoms or related diagnosis, or other medical, heath, or safety information related to the event or emergency, which would be collected and maintained in accordance with applicable laws and regulations. The system may also include information related to subsequent actions taken by the Bureau or building management to address the incident. Furthermore, the system includes the name, phone number, and email address of individuals identified as emergency contacts for Bureau staff.

RECORD SOURCE CATEGORIES:

The information in this system in part is collected directly from the individual or from the individual's emergency contact. Information may also be collected from security systems that monitor access to Bureau facilities, such as badging systems, video surveillance, human resources systems, and emergency notification systems. Information may also be collected from property management companies responsible for managing office buildings that house Bureau facilities and spaces.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR part 1070, to:

(1) Appropriate agencies, entities, and persons when (a) the Bureau suspects or has confirmed that there has been a breach of the system of records; (b) the Bureau has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Bureau (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in

connection with the Bureau's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(2) Another Federal agency or Federal entity, when the Bureau determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach;

(3) Another Federal or State agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(4) The Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(5) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the Bureau or Federal Government and who have a need to access the information in the performance of their duties or activities;

(7) The Department of Justice (DOJ) for its use in providing legal advice to the Bureau or in representing the Bureau in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the Bureau to be relevant and necessary to the advice or proceeding, and such proceeding names as a party in interest:

(a) The Bureau;

(b) Any employee of the Bureau in his or her official capacity;

(c) Any employee of the Bureau in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the Bureau determines that litigation is likely to affect the Bureau or any of its components;

(8) A grand jury pursuant either to a Federal or State grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(9) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(10) Appropriate national, State, tribal, local, or territorial public health entities responsible for infection prevention and control, testing, community mitigation, surveillance and data analytics, and tracing of exposures in their respective jurisdictions;

(11) Appropriate agencies, entities, and persons to the extent necessary to obtain information relevant to current and former Bureau employees' benefits, compensation, and employment;

(12) Appropriate Federal, State, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, or license, if the information is relevant to and indicates a violation or a potential violation of civil or criminal law, rule, regulation, order, or license within the responsibilities of the recipient agency; and

(13) Bureau staff, visitors, emergency contacts, or others to the extent necessary to locate an individual during a public health or safety emergency, trace potential exposures, and/or notify individuals who may have come into contact with the pathogen or hazardous agent or material as a result of accessing or visiting a CFPB facility, space, or worksite.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records are maintained in paper and electronic media. Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by a variety of fields including, without limitation, the individual's name, contact information, or by some combination thereof.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The Bureau will maintain electronic and paper records indefinitely until the National Archives and Records Administration (NARA) approves the CFPB's records disposition schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in writing in accordance with instructions in 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Instructions are also provided on the Bureau website: *https://www.consumerfinance.gov/foia-requests/submit-request/.*

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest the content of any record contained in this system of records may inquire in writing in accordance with instructions in 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Instructions are also provided on the Bureau website: *https://www.consumerfinance.gov/privacy/amending-and-correcting-records-under-privacy-act/.*

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

86 FR 8770 (February 9, 2021).

Dated: April 1, 2021.

Ren Essene,

Senior Agency Official for Privacy, Bureau of Consumer Financial Protection.

[FR Doc. 2021–07091 Filed 4–6–21; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License With a Joint Ownership Agreement

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: Pursuant to the Bayh-Dole Act, and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant an exclusive patent license agreement to UNM Rainforest Innovations (formerly known as STC.UNM), an organization having the primary function of managing inventions on behalf of the University of New Mexico, having a place of business at 101 Broadway Blvd. NE, Suite 1100, Albuquerque, New Mexico 87102.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this Notice.

ADDRESSES: Submit written objections to Melissa Ortiz, Technology Transfer Agreements Specialist, AFRL Directed Energy & Space Vehicles Directorates, 3550 Aberdeen Ave. SE, Kirtland AFB, NM 87117; Facsimile: 505–846–5034; or Email: *melissa.ortiz.1.ctr@us.af.mil.* Include Docket No. 2015–123 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Melissa Ortiz, Technology Transfer Agreements Specialist, AFRL Directed Energy & Space Vehicles Directorates, 3550 Aberdeen Ave. SE, Kirtland AFB, NM 87117; Facsimile: 505–846–5034; or Email: *melissa.ortiz.1.ctr@us.af.mil.*

SUPPLEMENTARY INFORMATION: The Department of the Air Force intends to grant the exclusive patent license agreement for the invention described in:

—U.S. Application No. 15/737,250, filed December 15, 2017, entitled, ''Methods to Mitigate Stress-Induced Metal Line Fractures for Thin-Film Solar Cells, Using Metal-Carbon-Nanotube Composites,'' and published as US 2018/0175218.

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

Adriane Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2021–07123 Filed 4–6–21; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision for the United States Air Force F–35A Wing Beddown and MQ–9 Wing Beddown Environmental Impact Statement

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of availability of Record of Decision.

SUMMARY: On March 19, 2021, the United States Air Force (USAF) signed the Record of Decision (ROD) for the Environmental Impact Statement: F–35A Wing Beddown and MQ–9 Wing Beddown.

ADDRESSES: Mr. Nolan Swick, AFCEC/CZN, 2261 Hughes Avenue, Suite 155, JBSA-Lackland Air Force Base, Texas 78236–9853, (210) 925–3392; *nolan.swick@us.af.mil.*

SUPPLEMENTARY INFORMATION: The USAF has decided to beddown 72 F–35A Primary Aerospace-Vehicle Assigned (PAA) with 6 F–35 Backup Aircraft Inventory (BAI) in a three-squadron F–35A Wing at Tyndall Air Force Base, Florida. The USAF is deferring a decision on the proposed MQ–9 Wing beddown at Tyndall AFB or Vandenberg AFB. The USAF decision documented in the ROD was based on matters discussed in the Final Environmental Impact Statement, inputs from the public and regulatory agencies, and other relevant factors. The Final Environmental Impact Statement was made available to the public on December 4, 2020 through a Notice of Availability in the **Federal Register** (Volume 85, Number 234, Pages 78323–78324) with a waiting period that ended on January 4, 2021.

Authority: This Notice of Availability is published pursuant to the regulations (40 CFR part 1506.6) implementing the provisions of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and the Air Force's Environmental Impact Analysis Process (32 CFR parts 989.21(b) and 989.24(b)(7)).

Adriane S. Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2021–07121 Filed 4–6–21; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Supplemental Assistance to Institutions of Higher Education (SAIHE); Correction

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice; correction.

SUMMARY: On March 29, 2021, the Department of Education (Department) published in the **Federal Register** a notice inviting applications (NIA) for new awards for fiscal year (FY) 2021 for the Supplemental Assistance to Institutions of Higher Education, Assistance Listing Number 84.425S. We are correcting the year of the Pell Grant recipient percent that institutions must meet to be eligible under Absolute Priority 6. We are also clarifying the eligibility requirements under Absolute Priorities 2 and 5.

DATES: This correction is applicable April 7, 2021.

FOR FURTHER INFORMATION CONTACT: Karen Epps, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B133, Washington, DC 20202. Telephone: (202) 377–3711. Email: *HEERF@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On March 29,2021, we published in the **Federal Register** the NIA for the FY 2021 Supplemental Assistance to Institutions of Higher Education grant opportunity (86 FR 16338). This notice corrects the year of the Pell Grant recipient percent that institutions must meet to be eligible for Absolute Priority 6 to Fall 2019. We also remove the reference to the ''December 27, 2020'' date with regard to institutional eligibility for Absolute Priorities 2 and 5. All other requirements and conditions in the NIA remain the same.

Corrections

In FR Doc. 2021–06527 appearing on page 16338 of the **Federal Register** of March 29, 2021, we make the following corrections:

1. On page 16339, in the first column, in the fourth line of the fourth paragraph, remove ''after December 27, 2020 (the date CRRSAA was enacted)''.

2. On page 16339, in the middle column, in the seventh line, remove ''2018'' and add, in its place, ''2019''.

3. On page 16340, in the middle column, in the fourth line, add ''an'' prior to ''eligible'' and remove ''on or after December 27, 2020''.

Program Authority: The Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA), Division M of Public Law 116–260.

Accessible Format: On request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this notice, the NIA, and a copy of the application in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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.

Michelle Asha Cooper,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2021–07099 Filed 4–6–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2021–SCC–0052]

CRRSAA Supplemental Aid to Institutions of Higher Education Application; Correction

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Correction notice.

SUMMARY: On April 1, 2021, the U.S. Department of Education published a 60-day comment period notice in the **Federal Register** with FR DOC# 2021–06691 (Page 17145, Column 1, Column 2, Column 3) seeking public comment for an information collection entitled, ''CRRSAA Supplemental Aid to Institutions of Higher Education Application''. The comment closing date of June 1, 2021 is wrong, and the correct closing date is May 3, 2021.

The PRA Coordinator, Strategic Collections and Clearance, Office of the Chief Data Officer, Office of Planning, Evaluation and Policy Development, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: April 1, 2021.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Office of the Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–07113 Filed 4–6–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Alaska Native Education Program; Corrections

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice; corrections.

SUMMARY: On January 12 2021, the Department of Education (Department) published in the **Federal Register** a notice inviting applications (NIA) for the fiscal year (FY) 2021 Alaska Native Education (ANE) program competition, Assistance Listing Number 84.356A. The Department is amending the NIA by increasing the estimated available funds and number of awards and extending the deadline date for transmittal of applications to May 3, 2021.

FOR FURTHER INFORMATION CONTACT: Almita Reed, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E222, Washington, DC 20202. Telephone: (202) 260–1979. Email: *OESE.ASKANEP@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On January 12, 2021, we published in the **Federal Register** (86 FR 2392) the NIA for the FY 2021 ANE competition. Following publication of the NIA, President Biden signed the American Rescue Plan Act of 2021, which provides $85,000,000 for awards to entities eligible to receive grants under the ANE program. Accordingly, we are amending the NIA to notify prospective applicants that we are increasing the estimated available funds and estimated number of awards, and are making related conforming changes. In addition, we are extending the deadline for transmittal of applications in order to allow applicants more time to prepare and submit their applications. The application package will be adjusted to reflect the changes.

Applicants that have already submitted applications under the FY 2021 ANE competition may resubmit applications, but are not required to do so. If a new application is not submitted, the Department will use the application that was submitted by the original deadline. If a new application is submitted, the Department will consider the application that is most recently submitted before the deadline of May 3, 2021.

All other requirements and conditions stated in the NIA remain the same.

Corrections

In the **Federal Register** of January 12, 2021 (86 FR 2392), in FR Doc. No. 2021–00378, we make the following corrections:

1. On page 2392, in the second column, under the ''Dates'' caption and following the heading ''Deadline for Transmittal of Applications,'' remove ''April 12, 2021'' and add, in its place, ''May 3, 2021''.

2. On page 2394, in the middle of the second column, correct the following in the ''II. Award Information'' section:

(a) Following the heading ''Estimated Available Funds:'' remove ''$15,592,043'' and add, in its place, ''$31,184,086''.

(b) Following the heading ''Estimated Number of Awards:'' remove ''18'' and add, in its place, ''36''.

Program Authority: 20 U.S.C. 7541–7546; section 1106 of the American Rescue Plan Act of 2021, Pub. L. 117–2.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc or other accessible format.

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.

Ruth Ryder,

Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education.

[FR Doc. 2021–07154 Filed 4–6–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Chronic Beryllium Disease Prevention Program, OMB Control Number 1910–5112. The proposed collection will provide the Department with the information needed to continue reducing the number of workers currently exposed to beryllium in the course of their work at DOE facilities managed by DOE or its contractors; minimize the levels and potential exposure to beryllium; to provide information to employees, to provide medical surveillance to ensure early detection of disease; and to permit oversight of the programs by DOE.

DATES: Comments regarding this collection must be received on or before May 7, 2021. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–4718.

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 information should be directed to James Dillard, U.S. Department of Energy, Office of Environment, Health, Safety and Security, AU–11/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585 or by email at: *james.dillard@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1910–5112; (2) *Information Collection Request Title:* Chronic Beryllium Disease Prevention Program; (3) *Type of Request:* Renewal; (4) *Purpose:* This collection provides the Department with the information needed to continue reducing the number of workers currently exposed to beryllium in the course of their work at DOE facilities managed by DOE or its contractors; minimize the levels and potential exposure to beryllium; to provide information to employees, to provide medical surveillance to ensure early detection of disease; and to permit oversight of the programs by DOE management; (5) *Annual Estimated Number of Respondents:* 6,650; (6) *Annual Estimated Number of Total Responses:* 16,613; (7) *Annual Estimated Number of Burden Hours:* 29,290; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $1,867,464.

Statutory Authority: Atomic Energy Act of 1954, 42 U.S.C. 2201, and the Department of Energy Organization Act, 42 U.S.C. 7191 and 42 U.S.C. 7254.

Signing Authority

This document of the Department of Energy was signed on April 1, 2021, by Matthew B. Moury, Associate Under Secretary for Environment, Health, Safety and Security, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 2, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–07132 Filed 4–6–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[DOE Docket No. 202–21–1]

Emergency Order Issued to the Electric Reliability Council of Texas (ERCOT) To Operate Power Generating Facilities Under Limited Circumstances in Texas as a Result of Extreme Weather

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of emergency action.

SUMMARY: The U.S. Department of Energy is issuing this Notice to document emergency actions that it has taken pursuant to the Federal Power Act (FPA).

ADDRESSES: Requests for more information should be addressed by electronic mail to *askoe@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: For further information on this Notice, or for information on the emergency activities related to the Order, contact Christopher Lawrence, 202–586–5260, *Christopher.lawrence@hq.doe.gov,* or by mail to the attention of Christopher Lawrence, OE–20, 1000 Independence Ave. SW, Washington, DC 20585. Due to limited access to DOE facilities because of current COVID–19 restrictions, contact via phone or email is preferred.

The Order and all related information are available here: *https://www.energy.gov/oe/downloads/federal-power-act-section-202c-ercot-february-2021.*

SUPPLEMENTARY INFORMATION: Pursuant to 10 CFR 1021.343(a), the U.S. Department of Energy (the Department) is issuing this Notice to document emergency actions taken. Under FPA section 202(c) [d]uring the continuance of a war in which the United States is engaged, or whenever the [Secretary of Energy] determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, the [Secretary of Energy] shall have authority . . . to require by order such

temporary connections of facilities and generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest.

On February 14, 2021, the Electric Reliability Council of Texas (ERCOT), the Independent System Operator (ISO) whose service territory includes 90 percent of the electric customers in the state of Texas, filed a Request for Emergency Order Under Section 202(c) of the Federal Power Act (Application) with the Department ''to preserve the reliability of bulk electric power system.'' In its Application, ERCOT cited unprecedented low temperatures facing Texas and the surrounding region that would lead to electric demand outpacing available generation. In its Application, ERCOT noted that numerous generation units would be unable to operate at full capacity without violating federal air quality or other permit limitations. Therefore, ERCOT requested that the Secretary issue an order immediately, effective February 14, 2021, through February 19, 2021, authorizing ''the provision of additional energy from all generation units subject to emissions or other permit limits'' in the ERCOT region.

After review of the facts and ERCOT policy and procedure, the Acting Secretary of Energy issued an emergency order (the Order) on February 14, 2021, directing ERCOT to dispatch necessary electric generation units and to order their operation only as needed to maintain the reliability of the power grid in the ERCOT region when the demand on the ERCOT system exceeds expected energy and reserve requirements.

The Department required that ERCOT provide a report by March 1, 2021, reporting all dates between February 14, 2021 and February 19, 2021, on which the Specified Resources were operated, the hours of operation, and exceedance of permitting limits, including sulfur dioxide (SO_2), nitrogen oxides (NO_X), mercury (Hg), carbon monoxide (CO), and other air pollutants, as well as exceedances of wastewater release limits.

According to the March 1, 2021, initial report, 27 of the 29 generating units provided emissions data in excess of permit limits. The other two generating units did not exceed permitted levels. The total mass emissions that exceeded permit limits, summed over all generating units for the reporting period, are: 77.03 U.S. tons of NO_X and 10.76 U.S. tons of CO. There were no exceedances for SO_2, Hg, or PM_{10}. These generating units are located in the Texas counties of Bosque, Calhoun, Fort Bend, Freestone, Harris, and Galveston. DOE will receive final data from ERCOT on March 31, 2021. After receiving the final data from ERCOT on March 31, 2021, DOE will review the report and determine the appropriate level of National Environmental Policy Act (NEPA) review, including analysis of environmental justice issues.

Procedural Background: The generating units (Specified Resources) to which this Order pertains were identified in the Order and can be found on the website identified above. Given the emergency nature of the expected load stress, the responsibility of ERCOT to ensure maximum reliability on its system, and the ability of ERCOT to identify and dispatch generation necessary to meet the additional load, the Acting Secretary determined additional dispatch of the Specified Resources was necessary to best meet the emergency and serve the public interest for purposes of FPA section 202(c). Because the additional generation may result in a conflict with environmental standards and requirements, the Acting Secretary authorized only the necessary additional generation, with reporting requirements as described below.

FPA section 202(c)(2) requires the Secretary of Energy to ensure any FPA section 202(c) order that may result in a conflict with a requirement of any environmental law be limited to the ''hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable,'' be consistent with any applicable environmental law and minimize any adverse environmental impacts. To minimize adverse environmental impacts, the Order limited operation of dispatched units to the times and within the parameters determined by ERCOT for reliability purposes.

The Acting Secretary conditioned the Order by requiring ERCOT to report on actions taken pursuant to the Order regarding the environmental impacts of this Order and its compliance with the conditions of this Order, in each case as requested by the Department of Energy from time to time. On March 1, 2021, ERCOT reported all dates between February 14, 2021, and February 19, 2021, on which the Specified Resources were operated, the hours of operation, and exceedance of permitting limits, including SO_2, NO_X, Hg, CO, and other air pollutants as well as exceedances of wastewater release limits. ERCOT shall submit a final report by March 31, 2021, with any revisions to the information reported on March 1, 2021. In addition, ERCOT shall provide information to the Department quantifying the net revenue associated with generation in excess of environmental limits accruing to non-RUC units in connection with orders issued by the Department pursuant to Section 202(c) of the Federal Power Act. The reports can viewed on the DOE website for this docket here: *https://www.energy.gov/oe/downloads/federal-power-act-section-202c-ercot-february-2021.*

Signing Authority

This document of the Department of Energy was signed on April 1, 2021 by Patricia A. Hoffman, Acting Assistant Secretary for the Office of Electricity, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 2, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–07136 Filed 4–6–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Number: PR21–40–000.

Applicants: Southwest Gas Corporation.

Description: Tariff filing per 284.123(b), (e)+(g): Amended SOC for Blanket Certificate to be effective 4/1/2021.

Filed Date: 3/30/2021.

Accession Number: 202103305001.

Comments Due: 5 p.m. ET 4/20/2021.

284.123(g) Protests Due: 5 p.m. ET 6/1/2021.

Docket Numbers: RP21–664–000.

Applicants: Great Lakes Gas Transmission Limited Partnership.

Description: § 4(d) Rate Filing: WEPCO Neg Rate Agreement to be effective 4/1/2021.

Filed Date: 3/31/21.
Accession Number: 20210331–5015.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–665–000.
Applicants: Eastern Gas Transmission and Storage, Inc.
Description: § 4(d) Rate Filing: Eastern GTS—March 31, 2021 Negotiated Rate Agreement to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5020.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–666–000.
Applicants: Eastern Gas Transmission and Storage, Inc.
Description: § 4(d) Rate Filing: Eastern GTS—March 31, 2021 Administrative Changes to be effective 5/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5031.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–667–000.
Applicants: Eastern Gas Transmission and Storage, Inc.
Description: § 4(d) Rate Filing: Eastern GTS—March 31, 2021 MCS Negotiated Rate Agreements to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5036.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–668–000.
Applicants: Hardy Storage Company, LLC.
Description: § 4(d) Rate Filing: RAM 2021 to be effective 5/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5039.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–669–000.
Applicants: Cove Point LNG, LP.
Description: § 4(d) Rate Filing: Cove Point—March 31, 2021 Administrative Change to be effective 5/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5040.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–670–000.
Applicants: Carolina Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Carolina Gas—March 31, 2021. Administrative Changes to be effective 5/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5058.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–671–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: Chinook Perm Release NRA to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5115.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–672–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (FPL 41618, 41619 to Spire 53634, Eco-Energy 53741) to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5118.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–673–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (JERA 46435 to EDF 53756) to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5119.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–674–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Atlanta Gas 8438 to various shippers eff 4–1–2021) to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5128.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–675–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Marathon 51753, 51754 to Spire 53914, 53915) to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5129.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–676–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Osaka 46429 to Texla 53939) to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5130.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–677–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Indiana Gas Capacity Releases eff 4–1–2021 to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5156.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–678–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Jay-Bee 34447 to MacQuarie 39067) to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5157.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–679–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Pensacola 43993 to BP 53944) to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5166.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–680–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Apr 2021 to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5167.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–681–000.
Applicants: Pine Needle LNG Company, LLC.
Description: § 4(d) Rate Filing: 2021 Annual Fuel and Electric Power Tracker Filing to be effective 5/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5206.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–682–000.
Applicants: Southwest Gas Storage Company.
Description: § 4(d) Rate Filing: Negotiated Rate Filing on 3–31–2021 to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5207.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–683–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: REX 2021–03–31 Negotiated Rate Agreements to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5225.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–684–000.
Applicants: Tallgrass Interstate Gas Transmission, LLC.
Description: § 4(d) Rate Filing: TIGT 2021–03–31 Negotiated Rate Agreement Amendment to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5226.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–685–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Letter Agreement Update (SWG) to be effective 5/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5240.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–686–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Crediting of Reservation Charges—GSS, S–2, LNG, and LG–A to be effective 5/1/2021.

Filed Date: 3/31/21.
Accession Number: 20210331–5249.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–687–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: OTRA Summer 2021 to be effective 5/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5259.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–688–000.
Applicants: Cheniere Corpus Christi Pipeline L.P.
Description: Annual Operations Transaction Report for 2020 of Cheniere Corpus Christi Pipeline, L.P.
Filed Date: 3/31/21.
Accession Number: 20210331–5268.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–689–000.
Applicants: Cheniere Creole Trail Pipeline, L.P.
Description: Annual Operations Transaction Report for 2020 of Cheniere Creole Trail Pipeline, L. P.
Filed Date: 3/31/21.
Accession Number: 20210331–5283.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–690–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Service Agreement—BP effective 4/1/2021 to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5288.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–691–000.
Applicants: Midship Pipeline Company, LLC.
Description: Annual Operations Transaction Report for 2020 of Midship Pipeline Company, LLC.
Filed Date: 3/31/21.
Accession Number: 20210331–5302.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–692–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—MC Global Amendment 911524 to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5322.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–693–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20210331 Negotiated Rate to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5308.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–694–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Service Agreement—MEA effective 4/1/2021 to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5323.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–695–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate FTS Service Agreements—effective 4/1/2021 to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5326.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–697–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: 2019–2020 Cashout Report of East Tennessee Natural Gas, LLC.
Filed Date: 3/31/21.
Accession Number: 20210331–5396.
Comments Due: 5 p.m. ET 4/12/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 1, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07157 Filed 4–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP21–661–000.
Applicants: Northern Border Pipeline Company.
Description: (doc-less) Motion to Intervene of Northern States Power Company—Minnesota.
Filed Date: 3/30/21.
Accession Number: 20210330–5304.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–662–000.
Applicants: LA Storage, LLC.
Description: § 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW Agreements 4.1.21 to be effective 4/1/2021.
Filed Date: 3/30/21.
Accession Number: 20210330–5170.
Comments Due: 5 p.m. ET 4/12/21.

Docket Numbers: RP21–663–000.
Applicants: Kern River Gas Transmission Company.
Description: Annual Gas Compressor Fuel Report of Kern River Gas Transmission Company.
Filed Date: 3/30/21.
Accession Number: 20210330–5211.
Comments Due: 5 p.m. ET 4/12/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 31, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07105 Filed 4–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC21–7–000]

Commission Information Collection Activities (FERC–598); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC–598 (Self-Certification for Entities Seeking Exempt Wholesale Generator or Foreign Utility Company Status).

DATES: Comments on the collection of information are due May 7, 2021.

ADDRESSES: Send written comments on FERC–598 to the Office of Management and Budget (OMB) through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902–0166) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments to the Commission (identified by Docket No. IC21–7–000) by any of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *U.S. Postal Service Mail:* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.
- Effective July 1, 2020, delivery of filings other than by eFiling or the U.S. Postal Service should be delivered to Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Instructions:

OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain;* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–598, Self-Certification for Entities Seeking Exempt Wholesale Generator or Foreign Utility Company Status.

OMB Control No.: 1902–0166.

Type of Request: Three-year renewal of FERC–598.

Abstract: Under 42 U.S.C. 16452(a), public-utility holding companies and their associates must maintain, and make available to the Commission, certain books, accounts, memoranda, and other records. The pertinent records are those that the Commission has determined: (1) Are relevant to costs incurred by a public-utility company that is an associate company of such holding company; and (2) are necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

Public-utility holding companies and their associates may seek exemption from this requirement. The pertinent statutory and regulatory provisions, 42 U.S.C. 16454 and 18 CFR 366.7, authorize such entities to file with the Commission a notice of self-certification demonstrating that their public-utility companies are ''exempt wholesale generators'' (EWGs) or ''foreign utility companies'' (FUCOs). If the Commission takes no action on a good-faith self-certification filing within 60 days after the date of filing, the applicant is exempt from the requirements of 42 U.S.C. 16452(a).

An EWG is defined as ''any person engaged directly, or indirectly through one or more affiliates . . . and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.'' [1] A FUCO is defined as ''any company that owns or operates facilities that are not located in any state and that are used for the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, if such company: (1) derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, within the United States; and (2) [n]either the company nor any of its subsidiary companies is a public-utility company operating in the United States.'' [2]

In the case of EWGs, the person filing a notice of self-certification must also file a copy of the notice of self-certification with the state regulatory authority of the state in which the facility is located. In addition, that person must represent to the Commission in its submission that it has filed a copy of the notice with the appropriate state regulatory authority.[3]

In accordance with OMB requirements,[4] the Commission issued and published a 60-day notice inviting public comments. The Commission issued the 60-day Notice on October 30, 2020, and published it in the **Federal Register** on November 5, 2020.[5] The Commission received no comments in response.

Type of Respondents: EWGs and FUCOs.

Estimate of Annual Burden:[6] The Commission estimates the total annual burden and cost[7] for this information collection as follows:

[1] 18 CFR 366.1.

[2] *Id.*

[3] 18 CFR 366.7(a).

[4] 5 CFR 1320.8(d).

[5] 85 FR 70604.

[6] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[7] The Commission staff thinks that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based upon FERC's FY 2020 annual full-time equivalent average of $172,329 (for salary plus benefits), the average hourly cost is $83 per hour.

FERC–598 (SELF-CERTIFICATION FOR ENTITIES SEEKING EXEMPT WHOLESALE GENERATOR STATUS OR FOREIGN UTILITY COMPANY STATUS)

Number of respondents (EWGs and FUCOs) (A)	Annual number of responses per respondent (B)	Total number of responses (column A × column B) (C)	Average burden hrs. and cost ($) per response (D)	Total annual burden hours and total annual cost (column C × column D) (E)	Average cost per respondent ($) (column E ÷ column 1) (F)
250	1	250	6 hrs.; $498	1,500 hrs.; $124,500	$498

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: March 23, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–07107 Filed 4–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–62–000]

Jackson Generation, LLC v. PJM Interconnection, L.L.C.; Notice of Complaint

Take notice that on March 30, 2021, pursuant to sections 206 and 306, of the Federal Power Act, 16 U.S.C. 824e and 825e and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Jackson Generation, LLC (Complainant or Jackson) filed a formal complaint against PJM Interconnection, L.L.C. (PJM or Respondent) asking that the Commission find PJM to have erroneously denied Jackson's request for a unit-specific exception to PJM's Minimum Offer Price Rule under Section 5.14(h)(5) of Attachment DD to PJM's Open Access Transmission Tariff, and direct PJM to accept Jackson's requested minimum offer price for the generation facility being developed by Jackson for the Base Residual Auction for the 2022/2023 Delivery Year, as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts listed for Respondents in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondents' answer and all interventions, or protests must be filed on or before the comment date. The Respondents' answer, motions to intervene, and protests must be served on the Complainant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov,* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on April 15, 2021.

Dated: April 1, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–07159 Filed 4–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–1519–000]

Cool Springs Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Cool Springs Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 20, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://*

www.ferc.gov. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: March 31, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07106 Filed 4–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–704–024.
Applicants: Pacific Gas and Electric Company.
Description: Compliance filing: CCSF Compliance filing (ER15–704–017, ER15–704–018) (Mar 2021) to be effective 7/23/2015.
Filed Date: 3/31/21.
Accession Number: 20210331–5004.
Comments Due: 5 p.m. ET 4/21/21.

Docket Numbers: ER15–704–025.
Applicants: Pacific Gas and Electric Company.
Description: Compliance filing: CCSF Compliance Filing (ER15–704–017, ER15–704–018) (Mar 2021) to be effective 7/1/2015.
Filed Date: 3/31/21.
Accession Number: 20210331–5005.
Comments Due: 5 p.m. ET 4/21/21.

Docket Numbers: ER19–2916–003.
Applicants: Calpine Mid-Merit II, LLC.
Description: Report Filing: Refund Report—Informational Filing to be effective N/A.
Filed Date: 3/31/21.
Accession Number: 20210331–5072.
Comments Due: 5 p.m. ET 4/21/21.

Docket Numbers: ER20–1425–001.
Applicants: Jersey Central Power & Light Company.
Description: Notice of Non-Material Change in Status of Jersey Central Power & Light Company.
Filed Date: 3/30/21.
Accession Number: 20210330–5394.
Comments Due: 5 p.m. ET 4/20/21.

Docket Numbers: ER21–1047–001.
Applicants: Southwestern Public Service Company.
Description: Tariff Amendment: SPS–GSEC–IA-Faria-Deferral of Action Ltr to be effective 12/31/9998.
Filed Date: 3/31/21.
Accession Number: 20210331–5282.
Comments Due: 5 p.m. ET 4/21/21.

Docket Numbers: ER21–1370–001.
Applicants: Assembly Solar II, LLC.
Description: Tariff Amendment: Normal docket update to be effective 4/15/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5292.
Comments Due: 5 p.m. ET 4/21/21.

Docket Numbers: ER21–1562–000.
Applicants: AEP Indiana Michigan Transmission Company, Inc., PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: AEP submits IMTCo & NIPSCO Interconnection Agreement SA No. 4247 to be effective 3/5/2021.
Filed Date: 3/30/21.
Accession Number: 20210330–5278.
Comments Due: 5 p.m. ET 4/20/21.

Docket Numbers: ER21–1563–000.
Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
Description: § 205(d) Rate Filing: 2021–03–31_OTP Attachment O and MM Filing to be effective 6/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5009.
Comments Due: 5 p.m. ET 4/21/21.

Docket Numbers: ER21–1564–000.
Applicants: Midcontinent Independent System Operator, Inc., Entergy Services, LLC.
Description: § 205(d) Rate Filing: 2021–03–31_Entergy Attach O Filing re 2020 Storms to be effective 6/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5045.
Comments Due: 5 p.m. ET 4/21/21.

Docket Numbers: ER21–1565–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3215R9 People's Electric Cooperative NITSA NOAs to be effective 3/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5059.
Comments Due: 5 p.m. ET 4/21/21.

Docket Numbers: ER21–1566–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2969R2 Associated Electric Cooperative, Inc. NITSA NOA to be effective 3/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5077.
Comments Due: 5 p.m. ET 4/21/21.

Docket Numbers: ER21–1567–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1148R30 American Electric Power NITSA and NOA to be effective 3/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5093.
Comments Due: 5 p.m. ET 4/21/21.

Docket Numbers: ER21–1568–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Order No. 890 compliance filing of Tri-State Generation and Transmission Association, Inc.
Filed Date: 3/30/21.
Accession Number: 20210330–5400.
Comments Due: 5 p.m. ET 4/20/21.

Docket Numbers: ER21–1569–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: MAIT submits revised IA SA No. 4578 to be effective 5/31/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5148.
Comments Due: 5 p.m. ET 4/21/21.

Docket Numbers: ER21–1570–000.
Applicants: New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: April 2021 Membership Filing to be effective 4/1/2021.
Filed Date: 3/31/21.
Accession Number: 20210331–5151.
Comments Due: 5 p.m. ET 4/21/21.

Docket Numbers: ER21–1571–000.
Applicants: California Independent System Operator Corporation.

Description: Tariff Cancellation: 2021–03–31 Notice of Termination of RC Service Agreement with Gridforce to be effective 4/1/2021.

Filed Date: 3/31/21.

Accession Number: 20210331–5170.

Comments Due: 5 p.m. ET 4/21/21.

Docket Numbers: ER21–1572–000.

Applicants: Avista Corporation.

Description: § 205(d) Rate Filing: Avista Corp LT Firm PTP Agreements to be effective 7/1/2021.

Filed Date: 3/31/21.

Accession Number: 20210331–5174.

Comments Due: 5 p.m. ET 4/21/21.

Docket Numbers: ER21–1573–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2021–03–31_SA 3647 Ameren-Hickory Solar FSA (J644) to be effective 5/31/2021.

Filed Date: 3/31/21.

Accession Number: 20210331–5189.

Comments Due: 5 p.m. ET 4/21/21.

Docket Numbers: ER21–1574–000.

Applicants: Arizona Public Service Company.

Description: Tariff Cancellation: Service Agreement No. 381—Notice of Cancellation to be effective 5/31/2021.

Filed Date: 3/31/21.

Accession Number: 20210331–5209.

Comments Due: 5 p.m. ET 4/21/21.

Docket Numbers: ER21–1575–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2021–03–31_Attachment FF Affidavit Requirement Filing to be effective 5/31/2021.

Filed Date: 3/31/21.

Accession Number: 20210331–5266.

Comments Due: 5 p.m. ET 4/21/21.

Docket Numbers: ER21–1576–000.

Applicants: Tri-State Generation and Transmission Association, Inc., Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Tri-State Generation and Transmission Association, Inc. Formula Rate to be effective 6/1/2021.

Filed Date: 3/31/21.

Accession Number: 20210331–5271.

Comments Due: 5 p.m. ET 4/21/21.

Docket Numbers: ER21–1577–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2021–03–31_SA 3271 Bondurant-Montezuma 345kV 1st Rev MPFCA (J499 J500 J527) to be effective 3/17/2021.

Filed Date: 3/31/21.

Accession Number: 20210331–5290.

Comments Due: 5 p.m. ET 4/21/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 pm Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202 502–8659.

Dated: March 31, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07112 Filed 4–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD21–9–000]

The Office of Public Participation; Supplemental Notice of Virtual Listening Session and a Public Comment Period

Take notice that the Federal Energy Regulatory Commission (Commission) staff will convene, in the above-referenced proceeding, a virtual listening session on April 19, 2021, from 6:00 p.m. to 9:00 p.m. Eastern time, to solicit public input on how the Commission should establish and operate the Office of Public Participation (OPP) pursuant to section 319 of the Federal Power Act (FPA) (16 U.S.C. 825q–1). The listening session will be led by Commission staff and may be attended by one or more Commissioners. Members of the public may also submit written comments to the record on how the Commission should establish and operate the OPP by Friday, April 23, 2021.

In December 2020, Congress directed the Commission to provide a report, by June 25, 2021, detailing its progress towards establishing the OPP. Section 319 of the FPA directs the Commission to establish the OPP to ''coordinate assistance to the public with respect to authorities exercised by the Commission,'' including assistance to those seeking to intervene in Commission proceedings. (16 U.S.C. 825q–1). A February 22, 2021 notice announced a Commissioner-led workshop to be held on April 16, 2021, from 9:00 a.m. to 5:00 p.m. Eastern time, and a March 5, 2021 notice announced five listening sessions from March 17, 2021 to March 25, 2021. The notices can be found on the Commission's website.

The April 19, 2021 evening session will give members of the public an additional opportunity to comment on how the Commission should design the OPP to encourage and facilitate public participation. Following a brief introduction from Commission staff, the session will be open to the public for three minutes of comment per participant. In advance of the listening sessions, participants may wish to consider the issues listed below:

1. Section 319 of the FPA states that the OPP will be administered by a Director. (16 U.S.C. 825q–1(a)(2)(A)). In addition to the Director, how should the office be structured?

2. Should the Commission consider creating an advisory board for OPP? If so, what role would the board serve and who should be on the board?

3. How should the OPP coordinate assistance to persons intervening or participating, or seeking to intervene or participate, in a Commission proceeding?

4. To what extent do you, or the organization you represent, currently interact with the Commission? What has hindered or helped your ability to participate in Commission proceedings?

5. Have you engaged with other governmental entities—such as local, state, and other federal agencies—on matters involving your interests? If so, how did those agencies engage in outreach, and what practices improved your ability to participate in their processes?

6. How should the OPP engage with Tribal Governments, environmental justice communities, energy consumers, landowners, and other members of the public affected by Commission proceedings?

7. Section 319 of the FPA allows the Commission to promulgate rules to offer compensation for attorney fees and other expenses to intervenors and participants who substantially contribute to a significant Commission proceeding if participation otherwise would result in significant financial hardship. (16 U.S.C. 825q–1(b)(2)). How should the Commission approach the issue of intervenor compensation? What should the OPP's role be with respect to intervenor compensation? How should the Commission establish a budget for and fund intervenor compensation?

What lessons can the Commission learn from the administration of similar state intervenor compensation programs?

The session will be open for the public to attend, and there is no fee for attendance. The listening session will be audio-only. Call-in information details, including preregistration, can be found on the OPP website. Information will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event. The listening sessions will be transcribed and placed into the record approximately one week after the session date.

The listening sessions will be accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Members of the public may also submit written comments on these topics to the record in Docket No. AD21–9–000 by Friday, April 23, 2021. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

For questions about the listening session, please contact Stacey Steep of the Office of General Counsel at (202) 502–8148, or send an email to *OPPWorkshop@ferc.gov for general questions,* and Sarah McKinley, (202) 502–8368, *sarah.mckinley@ferc.gov,* for logistical issues.

Dated: March 23, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–07108 Filed 4–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–1532–000]

Quitman II Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Quitman II Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 20, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: March 31, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07104 Filed 4–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP21–576–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Petition for Declaratory Order

Take notice that on March 1, 2021, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure and section 284.501 of the Commission's regulations, Transcontinental Gas Pipe Line Company, LLC (Petitioner or Transco) filed a petition for declaratory order determining that the proper rate for the firm transportation service that Transco provides to Fairless Energy, LLC under Transco's Contract No. 9218326 is the incremental rate for MarketLink Expansion service under section 1.1.7 of Part II of Transco's FERC Gas Tariff, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For

assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern time on April 23, 2021.

Dated: March 23, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–07109 Filed 4–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC21–61–000.

Applicants: Energy Power Investment Company, LLC.

Description: Answer of Energy Power Investment Company, LLC and Request for Limited Comment Period.

Filed Date: 3/31/21.

Accession Number: 20210331–5338.

Comments Due: 5 p.m. ET 4/14/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–1578–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 5995; Queue No. AD2–160/AE2–253 to be effective 3/3/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5011.

Comments Due: 5 p.m. ET 4/22/21.

Docket Numbers: ER21–1579–000.

Applicants: Duke Energy Progress, LLC, Duke Energy Florida, LLC, Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: Revisions to Attachment J (LGIP) to Joint OATT to be effective 6/1/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5029.

Comments Due: 5 p.m. ET 4/22/21.

Docket Numbers: ER21–1580–000.

Applicants: Sky River Wind, LLC.

Description: Baseline eTariff Filing: Sky River Wind, LLC Application for MBR Authority to be effective 6/1/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5058.

Comments Due: 5 p.m. ET 4/22/21.

Docket Numbers: ER21–1581–000.

Applicants: Midcontinent Independent System Operator, Inc., GridLiance Heartland LLC.

Description: § 205(d) Rate Filing: 2021–04–01_GridLiance Attachment O Filing to be effective 5/31/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5060.

Comments Due: 5 p.m. ET 4/22/21.

Docket Numbers: ER21–1582–000.

Applicants: Consolidated Edison Company of New York, Inc.

Description: § 205(d) Rate Filing: PASNY Tariff 4–1–2021 CDG Membership Amendment to be effective 4/1/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5064.

Comments Due: 5 p.m. ET 4/22/21.

Docket Numbers: ER21–1583–000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing: 2021 Real Power Loss Factor to be effective 6/1/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5066.

Comments Due: 5 p.m. ET 4/22/21.

Docket Numbers: ER21–1584–000.

Applicants: Dominion Energy South Carolina, Inc.

Description: Notice of Cancellation of Operating Agreement for Interconnected Generation of Dominion Energy South Carolina, Inc.

Filed Date: 3/31/21.

Accession Number: 20210331–5596.

Comments Due: 5 p.m. ET 4/21/21.

Docket Numbers: ER21–1585–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2021–04–01 OATT Att-W–E&P-FormofSvcAgrmt-SPS to be effective 6/1/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5128.

Comments Due: 5 p.m. ET 4/22/21.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH21–9–000.

Applicants: GreanLife Solar LLC, Renewable Energy Alternatives, LLC.

Description: GreanLife Solar LLC submits FERC–65–A Exemption Notification.

Filed Date: 3/31/21.

Accession Number: 20210331–5563.

Comments Due: 5 p.m. ET 4/21/21.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM21–14–000.

Applicants: Evergy Kansas Central, Inc., Evergy Kansas South, Inc., Evergy Metro, Inc., Evergy Missouri West, Inc., Oklahoma Gas & Electric Company, Southwestern Public Service Company, The Empire District Electric Company, Southwestern Electric Power Company, Public Service Company of Oklahoma

Description: Application of SPP Utilities to Terminate Its Mandatory Purchase Obligation under the Public Utility Regulatory Policies Act of 1978.

Filed Date: 3/31/21.

Accession Number: 20210331–5384.

Comments Due: 5 p.m. ET 4/28/21.

Docket Numbers: QM21–15–000.

Applicants: Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company.

Description: Application of AEP PJM Utilities to Terminate Its Mandatory Purchase Obligation under the Public Utility Regulatory Policies Act of 1978.

Filed Date: 3/31/21.

Accession Number: 20210331–5400.

Comments Due: 5 p.m. ET 4/28/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 1, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07156 Filed 4–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5124–022]

Washington Electric Cooperative, Inc.; Notice of Waiver Period for Water Quality Certification Application

On March 29, 2021, the Vermont Department of Environmental Conservation (Vermont DEC) notified the Federal Energy Regulatory Commission (Commission) that Washington Electric Cooperative, Inc. submitted an application for a Clean Water Act section 401(a)(1) water quality certification to Vermont DEC on March 29, 2021, in conjunction with the above captioned project. Pursuant to 40 CFR 121.6, we hereby notify the Vermont DEC of the following:

Date of Receipt of the Certification Request: March 29, 2021.

Reasonable Period of Time to Act on the Certification Request: One year.

Date Waiver Occurs for Failure to Act: March 29, 2022.

If Vermont DEC fails or refuses to act on the water quality certification request by the above waiver date, then the agency's certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: April 1, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–07158 Filed 4–6–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10021–58–OA]

National Environmental Education Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) office of Public Engagement and Environmental Education is soliciting applications for environmental education professionals for consideration to serve on the National Environmental Education Advisory Council (NEEAC). There are two vacancies on the Advisory Council that must be filled. Additional avenues and resources may be utilized in the solicitation of applications. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

DATES: Applications are due no later than May 14, 2021.

ADDRESSES: Submit nominations electronically (preferred) and application materials to Javier Araujo, Designated Federal Officer, National Environmental Education Advisory Council, U.S. Environmental Protection Agency, Office of Public Engagement and Environmental Education, (MC 1704A), 1200 Pennsylvania Ave. NW, Room 1426 (WJCN), Washington, DC 20460, Phone: (202) 564–2642, email: *araujo.javier@epa.gov.*

FOR FURTHER INFORMATION CONTACT: For information regarding this Request for Nominations, please contact Mr. Javier Araujo, Designated Federal Officer, *araujo.javier@epa.gov,* 202–564–2642, U.S. EPA, Office of Environmental Education, William Jefferson Clinton North, Room 1426, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

General Information concerning NEEAC can be found on the EPA website at: *https://www.epa.gov/education/national-environmental-education-advisory-council-neeac.*

SUPPLEMENTARY INFORMATION: The National Environmental Education Act requires that the council be comprised of (11) members appointed by the Administrator of the EPA. Members represent a balance of perspectives, professional qualifications, and experience. The Act specifies that members must represent the following sectors: Primary and secondary education (one of whom shall be a classroom teacher), two members; colleges and universities, two members; business and industry, two members; non-profit organizations, two members; state departments of education and natural resources, two members, and one member to represent senior Americans. Members are chosen to represent various geographic regions of the country, and the Council strives for a diverse representation. The professional backgrounds of Council members should include education, science, policy, or other appropriate disciplines. Each member of the Council shall hold office for a one (1) to three (3) year period. Members are expected to participate in up to two (2) meetings per year and monthly or more conference calls per year. *Members of the council shall receive compensation and allowances, including travel expenses at a rate fixed by the Administrator.*

Expertise Sought: The NEEAC staff office seeks candidates with demonstrated experience and or knowledge in any of the following environmental education issue areas: (a) Integrating environmental education into state and local education reform and improvement; (b) state, local and tribal level capacity building for environmental education; (c) cross-sector partnerships to foster environmental education; (d) leveraging resources for environmental education; (e) design and implementation of environmental education research; (f) evaluation methodology; professional development for teachers and other education professionals; and targeting under-represented audiences, including low-income, multi-cultural, senior citizens and other adults.

The NEEAC is best served by a structurally and geographically diverse group of individuals. Each individual will demonstrate the ability to make a time commitment. In addition, the individual will demonstrate both strong leadership and analytical skills. Also, strong writing skills, communication skills and the ability to evaluate programs in an unbiased manner are essential. Team players, which can meet deadlines and review items on short notice are ideal candidates.

Persons having questions about the application procedure or who are unable to submit applications by electronic means, should contact Javier Araujo (DFO), at the contact information provided above in this notice. Non-electronic submissions must contain the same information as the electronic. The NEEAC staff Office will acknowledge receipt of the application. The NEEAC staff office will develop a short list of candidates for more detailed consideration. The short list candidates will be required to fill out the Confidential Disclosure Form for Special Government Employees serving Federal Advisory Committees at the U.S. Environmental Protection Agency. (EPA form 3110–48). This confidential form allows government officials to determine whether there is a statutory conflict between that person's public responsibilities (which include membership on a Federal Advisory Committee) and private interests and activities and the appearance of a lack of impartiality as defined by Federal regulation. The form may be viewed and downloaded from the following URL address. Please note this form is not an application form. *http://intranet.epa.gov/ogc/ethics/EPA3110-48ver3.pdf.*

How to Apply: Any interested and qualified individuals may be considered for appointment on the National Environmental Education Advisory

Council. In order to apply, the following four items should be submitted in electronic format to the Designated Federal Officer, Javier Araujo, *araujo.javier@epa.gov* and contain the following: (1) Contact information including name, address, phone and fax numbers and an email address (2) a curriculum vitae or resume, (3) the specific area of expertise in environmental education and the sector or slot the applicant is applying for, (4) recent service on other national advisory committees or national professional organizations; a one page commentary on the applicant's philosophy regarding the need for, development, implementation and or management of environmental education nationally.

Hiram Lee Tanner III,

Director, Office of Environmental Education.

[FR Doc. 2021–06652 Filed 4–6–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10020–11–OMS]

Privacy Act of 1974; System of Records

AGENCY: Office of Mission Support (OMS), Environmental Protection Agency (EPA).

ACTION: Notice of a new system of records.

SUMMARY: The U.S. Environmental Protection Agency's (EPA), Office of Human Resources is giving notice that it proposes to create a new system of records pursuant to the provisions of the Privacy Act of 1974. The Talent Enterprise Diagnostic (TED) system is being created to establish a new tool within Sharepoint, the Agency's existing Microsoft O365 web-based document management and storage system. TED provides for the collection of information to track, update, and assess the skills of positions throughout EPA along with the corresponding skills of incumbents in those positions. TED supports the Agency's efforts to: (1) Develop policies and programs that are based on comprehensive workforce planning and analysis; and (2) meet requirements under 5 CFR 250, such as monitoring and addressing government-wide and Agency-specific skill gaps in mission-critical occupations. The system information will be accessed and used by EPA's supervisors, designated human resources specialists and analysts, managers within each office and region, Agency-wide senior leaders, and the Agency's training branch. TED provides for the collection of information to track, update, and assess the skills of positions throughout EPA along with the corresponding skills of incumbents in those positions.

DATES: Persons wishing to comment on this system of records notice must do so by May 7, 2021. New routine uses for this new system of records will be effective May 7, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. OMS–2020–0483, by one of the following methods:

Regulations.gov: www.regulations.gov Follow the online instructions for submitting comments.

Email: oei.docket@epa.gov.

Fax: 202–566–1752.

Mail: OMS Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

Hand Delivery: OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OMS–2020–0483. The EPA policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Controlled Unclassified Information (CUI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CUI or otherwise protected through *www.regulations.gov.* The *www.regulations.gov* website is an ''anonymous access'' system for EPA, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. Each agency determines submission requirements within their own internal processes and standards. EPA has no requirement of personal information. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CUI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460.

Temporary Hours During COVID–19

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mailand faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.* The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OMS Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Please submit questions to Mara Kamen, *kamen.mara@epa.gov,* 202–564–7159, Director, Office of Human Resources, Office of Mission Support, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: TED is a workforce planning tool that helps managers and supervisors identify competency gaps. Agency leaders will use data from TED to develop strategies to mitigate future occupational and skill gaps. TED consists of personalized profiles for each employee. The profiles include work-related information to help supervisors identify and select staff from a directory and determine

competency gaps for workforce planning. The system information is derived from EPA's personnel and payroll system called the U.S. Department of Interior's Oracle Business Intelligence Enterprise Edition (IBC/OBIEE). EPA plans to institute several security controls to protect personally identifiable information in TED.

SYSTEM NAME AND NUMBER:

Talent Enterprise Diagnostic (TED), EPA–84.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Human Resources, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

SYSTEM MANAGER(S):

Mara Kamen, *kamen.mara@epa.gov,* 202–564–7159, Director, Office of Human Resources, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S. Code 1401 (Establishment of Agency Chief Human Capital Officers); 5 U.S.C. 1402 (a)(2), (b)(1), (b)(2) (Authority and functions of Agency Chief Human Capital Officers, as it applies to identifying and closing competency gaps): 5 CFR 250.203 (b)(1) and (b)(3); and 5 CFR 250.204 (a)(3).

PURPOSE(S) OF THE SYSTEM:

To monitor, address, report and track government-wide and Agency-specific skill gaps within mission critical occupations as required under 5 CFR 250 through a Microsoft O365 SharePoint-based application. To share data resulting from these competency assessments with Agency senior leaders and management for the purpose of developing strategies to close competency gaps.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

EPA employees, and their supervisors or managers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of supervisor, randomized SharePoint incumbent ID number, first and last name of employee, pay plan, grade, location, occupational series, organization to which the position is assigned, occupational series, role, name of competency and the proficiency level required for each position, name of competency and the proficiency level required for each incumbent in each position.

RECORD SOURCE CATEGORIES:

The sources of information include: (1) Data pulled from EPA's personnel and payroll system (IBC/OBIEE); and (2) EPA supervisors' assessments of: (a) The skills proficiency levels required of each position under the supervisor's immediate chain of command; and (b) assessments of the skills proficiency levels of each incumbent occupying those positions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The routine uses for this system are compatible with the purpose for which their records are collected. The information may be disclosed to and for the following EPA General Routine Uses: A, B, C, D, E, F, G, H, I, J, and K apply to this system. Routine uses L, and M are required in accordance with OMB–M–17–12.

A. Disclosure for Law Enforcement Purposes:

Information may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

B. Disclosure Incident to Requesting Information:

Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and to identify the type of information requested,) when necessary to obtain information relevant to an Agency decision concerning retention of an employee or other personnel action (other than hiring,) retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

C. Disclosure to Requesting Agency:

Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

D. Disclosure to Office of Management and Budget:

Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

E. Disclosure to Congressional Offices:

Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

F. Disclosure to Department of Justice:

Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear, when:

1. The Agency, or any component thereof;

2. Any employee of the Agency in his or her official capacity;

3. Any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency have agreed to represent the employee; or

4. The United States, if the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

G. Disclosure to the National Archives:

Information may be disclosed to the National Archives and Records Administration in records management inspections.

H. Disclosure to Contractors, Grantees, and Others:

Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Agency and who have a need to have access to the information in the performance of their duties or activities for the Agency. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

I. Disclosures for Administrative Claims, Complaints and Appeals:

Information from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

J. Disclosure to the Office of Personnel Management:

Information from this system of records may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

K. Disclosure in Connection With Litigation:

Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Agency, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

L. Disclosure to Persons or Entities in Response to an Actual or Suspected Breach of Personally Identifiable Information:

To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that there has been a breach of the system of records, (2) the Agency has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Agency (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Agency's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

M. Disclosure to assist another agency in its efforts to respond to a breach:

To another Federal agency or Federal entity, when the Agency determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained electronically on computer storage devices such as computer tapes and disks. The records are also stored on the access restricted TED SharePoint site. Electronic files are labeled with within TED according to the randomly generated ID number.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

EPA will retrieve records by first and last name of employee, pay plan, grade or level, location, series, organization to which the position is assigned and occupational series/family. Designated points of contact can request organization-level, Excel-based reports from the TED Program Managers with results of incumbent and position assessments, which might include the names of individuals. The reports are accessed via SharePoint through a password-restricted system.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Information in TED and the data which is downloaded into Excel spreadsheets will be destroyed when 3 years old, or 3 years after superseded or obsolete, whichever is appropriate, but longer retention is authorized if required for business use. Information stored in TED falls under EPA's Records Control Schedule 1029 (Employee Training Program Records).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Security controls used to protect personally identifiable information in TED are commensurate with those required for an information system rated moderate for confidentiality, integrity, and availability, as prescribed in NIST Special Publication, 800–53, ''Recommended Security Controls for Federal Information Systems,'' Revision 4.

Administrative Safeguards. EPA implements role-based access controls. TED has three permission level assignments which will allow users access only to those functions for which they are authorized: Owners, Members and Visitors. The TED Owners (Contractor, TED Program Managers and OHR managers) have full control of the system. The TED Owners can give access to TED Members (managers and supervisors) so that they can claim employees and complete the assessments. The third group, the TED Visitors, is anyone who can access EPA's SharePoint and know how to find the landing page. In addition, EPA personnel are required to complete annual Agency Information Security and Privacy training. EPA personnel are instructed to lock their computers when they leave their desks.

Technical Safeguards. Computer records are maintained in a secure, password-protected computer system. TED access is restricted to authorized, authenticated users. In addition, users are required to have strong passwords that are frequently changed. The Agency uses encryption for transmitting organization-level reports, and regularly reviews security procedures and best practices to enhance security.

Physical Safeguards. All records are maintained in secure, access-controlled areas or buildings. Backups will be maintained at a disaster recovery site.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information in this system of records about themselves are required to provide adequate identification (*e.g.,* driver's license, military identification card, employee badge or identification card). Additional identity verification procedures may be required, as warranted. Requests must meet the requirements of EPA regulations that implement the Privacy Act of 1974, at 40 CFR part 16.

CONTESTING RECORD PROCEDURES:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are described in EPA's Privacy Act regulations at 40 CFR part 16.

NOTIFICATION PROCEDURE:

Any individual who wants to know whether this system of records contains a record about him or her, should make a written request to the Attn: Agency Privacy Officer, MC 2831T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, *privacy@epa.gov.*

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Vaughn Noga,

Senior Agency Official for Privacy.

[FR Doc. 2021–07097 Filed 4–6–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10021–52–Region 3]

Notice of Administrative Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), notice is hereby given that a proposed administrative settlement agreement for recovery of response costs (''Proposed Agreement'') associated with the Transportation Drive PCB Superfund Site in Hazle Township, Luzerne County, Pennsylvania (''Site'') was executed by the Environmental Protection Agency (''EPA'') and is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations that indicate that the Proposed Agreement is inappropriate, improper, or inadequate. The Proposed Agreement would resolve potential EPA claims against Consolidated Lands, LLC (''Settling Party''). The Proposed Agreement would require Settling Party to reimburse EPA $250,000.00 for response costs incurred by EPA for the Site. For thirty (30) days following the date of publication of this notice, EPA will receive electronic comments relating to the Proposed Agreement. EPA's response to any comments received will be available for public inspection by request. Please see the **ADDRESSES** section of this notice for special instructions in effect due to impacts related to the COVID–19 pandemic.

DATES: Comments must be submitted on or before May 7, 2021.

ADDRESSES: As a result of impacts related to the COVID–19 pandemic, requests for documents and submission of comments must be via electronic mail, except as provided below. The Proposed Agreement and additional background information relating to the Proposed Agreement are available for public inspection upon request by contacting Maria Goodine, Compliance Officer, at *goodine.maria@epa.gov.* Comments must be submitted via electronic mail to this same email address and should reference the ''Transportation Drive PCB Superfund Site, Proposed Settlement Agreement'' and ''EPA CERCLA Docket No. CERC–03–2021–0009CR.'' Persons without access to electronic mail may call Ms. Goodine at (215) 814–2488 to make alternative arrangements.

FOR FURTHER INFORMATION CONTACT: Maria Goodine (3SD41), Compliance Officer, U.S. Environmental Protection Agency Region III, Phone: (215) 814–2488; email: *goodine.maria@epa.gov.*

Dated: April 1, 2021.

Linda Dietz,

Acting Director, Superfund and Emergency Management Division, U.S. Environmental Protection Agency, Region III.

[FR Doc. 2021–07138 Filed 4–6–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011290–043.

Agreement Name: International Vessel Operators Dangerous Goods Association Agreement.

Parties: COSCO Shipping Lines Co., Ltd.; Crowley Caribbean Services LLC; Crowley Latin America Services, LLC; Evergreen Line Joint Service Agreement; Hapag-Lloyd AG; HMM Company Limited; Independent Container Line, Ltd; Klinge Corporation; Maersk A/S; Matson Navigation Company, Inc.; Ocean Network Express Pte. Ltd.; Orient Overseas Container Line Limited; Tampa Bay International Terminals, Inc.; Tropical Shipping & Construction Company Limited, LLC; Bermuda Container Line Ltd.; Seaboard Marine Ltd.; Yang Ming Marine Transport Corporation; Wallenius Wilhelmsen Ocean AS; Wan Hai Lines Ltd.; National Cargo Bureau.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment deletes APL Co. PTE Ltd., Marine Transport Management, Inc., and National Shipping Company of Saudi Arabia d/b/a Bahri as parties to the Agreement. It adds the National Cargo Bureau as an associate party. The amendment also makes technical corrections to the names of three other parties.

Proposed Effective Date: 5/10/2021.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/1638.

Agreement No.: 201359.

Agreement Name: Schuyler Line Navigation Company, LLC & American President Lines, LLC Space Charter Agreement.

Parties: American President Lines, LLC; and Schuyler Line Navigation Company, LLC.

Filing Party: Patricia O'Neill; American President Lines, LLC.

Synopsis: The Agreement authorizes the parties to charter space to and from one another in the trade between the U.S. on the one hand and Dominican Republic, Haiti, Suriname, Jamaica, Trinidad & Tobago, Bahamas, Martinique, Saint Vincent and the Grenadines, Grenada, Dominica, Curacao, Saint Lucia, Antigua & Barbuda, Cayman Islands, Aruba, Saint Kitts & Nevis, Honduras, Belize, Guatemala, Nicaragua, Costa Rica, Montserrat, Colombia, Venezuela, British Virgin Islands, Saint Barthelemy, Caribbean Netherlands, Guadeloupe, Barbados, Anguilla, Argentina, Bolivia, Brazil, Chile, Ecuador, Guyana, Paraguay, Uruguay, French Guiana, Panama, Peru, and Mexico on the other hand.

Proposed Effective Date: 5/10/21.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/41507.

Dated: April 2, 2021.

JoAnne O'Bryant,

Program Analyst.

[FR Doc. 2021–07153 Filed 4–6–21; 8:45 am]

BILLING CODE 6730–02–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 April 22, 2021.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Steven Clevidence, Stevensville, Montana; the GC Heritage Trust and the MG Holdings Trust, Ryan Clevidence, as trustee, the Groff Heirloom Trust and the IW Holdings Trust, Sara Clevidence Waldbillig, as trustee, all of Lolo, Montana; and Shane Reely, as trust protector of each of the foregoing trusts, Missoula, Montana;* to join the Groff-Clevidence family control group, a group acting in concert, to retain voting shares of Farmers State Financial Corp., and thereby indirectly retain voting shares of Farmers State Bank, both of Victor, Montana.

Board of Governors of the Federal Reserve System, April 2, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–07160 Filed 4–6–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)–PAR 21–165, Underground Mine Evacuation Technologies and Human Factors Research.

Date: June 3, 2021.

Time: 1:00 p.m.–3:00 p.m., EDT.

Place: Video-Assisted Meeting.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Marilyn Ridenour, B.S.N., M.B.A., M.P.H., C.P.H., C.I.C., CAPT, USPHS, Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26505, Telephone (304) 285–5879; *MRidenour@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021–07162 Filed 4–6–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Availability of Program Application Instructions for the University Centers for Excellence in Developmental Disabilities Network To Expand COVID–19 Vaccine Access for People With Disabilities

Title: Expanding Disabilities Network's (UCEDDs) Access to COVID 19 Vaccines.

Announcement Type: Initial.

Statutory Authority: Subtitle D of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act).

Catalog of Federal Domestic Assistance (CFDA) Number: 93.632.

DATES: The deadline date for the submission of the Expanding Disabilities Network's (UCEDDs) Access to COVID 19 Vaccines is 11:59PM April 21, 2021.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

The Administration for Community Living (ACL) announced a new funding opportunity to increase vaccine access for people with disabilities. With funding and partnership support from the Centers for Disease Control and Prevention (CDC), ACL is providing grants to disability networks to provide critical services to help communities combat COVID–19. A leading priority of this joint effort is to ensure vaccines are equally accessible to the disability population.

Approximately 61 million adults living with in the US have a disability, representing approximately 26 percent of the adult population. People with disabilities may have an increased risk for contracting COVID–19 based on where they live or the services they receive. Some people with disabilities live in group settings which places them at higher risk for acquiring COVID–19 in comparison to people without disabilities. People with disabilities may also require close contact with direct service providers, including personal care attendants or other care providers, who help with activities of daily living. Moreover, many people with disabilities have underlying health conditions (*e.g.* diabetes, heart disease, and obesity) that increases the risk of severe illness due to COVID–19. In addition, research also found that people with Down Syndrome are significantly more likely to be hospitalized from COVID–19 than the general population.

There are increasing reports of barriers of unequal access in

communities to vaccinate people with disabilities. For example, some people with disabilities may experience difficulties scheduling appointments, communicating, obtaining accessible transportation or require direct support services to attend vaccination appointments. Others living in the community may be isolated or unable to leave their home and may require in-home vaccination.

This funding opportunity is designed to breakdown those barriers to expand vaccine access in communities. Examples of activities consistent with the purpose of this funding are the following:

- Education about the importance of receiving a vaccine,
- Identifying people unable to independently travel to a vaccination site,
- Helping with scheduling a vaccine appointment,
- Arranging or providing accessible transportation,
- Providing companion/personal support,
- Reminding people of their second vaccination appointment if needed, and/or
- Providing technical assistance to local health departments or other entities on vaccine accessibility.

Awards authorized under Subtitle D of the DD Act, University Centers for Excellence in Developmental Disabilities (UCEDDs), shall be provided funding under this opportunity. Award recipients will be required to submit annual progress reports on the activities conducted, challenges, successes, and lessons learned and provide a written summary. In addition, to show impact of the grant awards, the grantee will include the number of people served or impacted by the services provided against each of the activities chosen to be implemented. To be eligible to receive this grant, the grantee must submit a Letter of Assurance to ACL containing all of the assurances required, (see below, ''Section III. Eligibility Criteria and Other Requirements'' and ''Section IV. Submission Information''). UCEDDs who do not complete assurance requirements below, or otherwise indicate no desire to receive funds will be excluded from receiving funds.

ACL may establish ad hoc dates based on the need of the COVID–19 response, *e.g.,* to meet unanticipated issues related to COVID–19 and/or to allow impacted eligible applicants that missed the cut-off date to submit an application for consideration. ACL intends to issue initial notices of award as applications are received prior to the application due date to address urgent COVID–19 response needs. Second notices of award are planned after the actual number of applicants is finalized.

II. Award Information

1. Funding Instrument Type

These awards will be made in the form of grants to UCEDDs.

2. Anticipated Total Funding per Budget Period

Under this program announcement, ACL intends to make grant awards to each State and territory, and the District of Columbia. Awards made under this announcement have an estimated start date of April 1, 2021 and an estimated end date of September 30, 2022, for a 17-month budget and performance period.

The total available funding for this opportunity is $4,000,000. Funding will be distributed evenly across the states and territories to the 67 UCEDD grantees. The projected amount for each award is $59,701.

III. Eligibility Criteria and Other Requirements

1. Eligible Entities

The eligible entity for these awards is the agency designated as a UCEDD in each state or territory.

2. Other Requirements

A. Letter of Assurance

A Letter of Assurance is required to be submitted by the eligible entity in order to receive an award. The Letter of Assurance must include the following:

1. Assurance that the award recipient is the agency or entity designated as UCEDD in the state or territory.
2. Assurance that funds will supplement and not supplant existing UCEDD funding.
3. Assurance that funds will be spent in ways consistent with the purpose of the funding in carrying out one or more of the following activities:
   - Education about the importance of receiving a vaccine,
   - Identifying people unable to independently travel to a site,
   - Helping with scheduling a vaccine appointment,
   - Arranging or providing accessible transportation,
   - Providing companion/personal support,
   - Reminding people of their second vaccination appointment if needed, and/or
   - Providing technical assistance to local health departments or other entities on vaccine accessibility.
4. Assurance that the award recipient will do outreach to Aging and Disability Resource Centers, Centers for Independent Living, State Councils on Developmental Disabilities, and other University Centers for Excellence in Developmental Disabilities in the state as appropriate to maximize state coordination wherever possible.
5. Assurance to provide semi-annual federal financial reports and annual program reports that describes activities conducted, challenges, successes, and lessons learned. The written summary will also include number of people served or impacted by the services provided.

B. DUNS Number

All grant applicants must obtain and keep current a D–U–N–S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D–U–N–S number can be obtained from: *https://iupdate.dnb.com/iUpdate/viewiUpdateHome.htm.*

C. Intergovernmental Review

Executive Order 12372, Intergovernmental Review of Federal Programs, is not applicable to these grant applications.

IV. Submission Information

1. Instructions for completing the application will be available from the ACL Project Officer.

The following table identifies the designated program officer against each of the 10 ACL regions:

	ACL regions	Email/phone
Pam O'Brien, Program Officer	• *Region I:* CT, MA, ME, NH, RI, VT • *Region II:* NY, NJ, PR, VI. • *Region III:* DC, DE, MD, PA, VA, WV. • *Region IV:* AL, FL, GA, KY, MS, NC, SC, TN. • *Region VI:* AR, LA, OK, NM, TX.	*pamela.obrien@acl.hhs.gov,* 202–795–7417.

	ACL regions	Email/phone
Shawn Callaway, Program Officer	• *Region V:* IL, IN, MI, MN, OH, WI • *Region VII:* IA, KS, MO, NE. • *Region VIII:* CO, MT, UT, WY, ND, SD. • *Region IX:* CA, NV, AZ, HI, GU, CNMI, AS. • *Region X:* AK, ID, OR, WA.	*shawn.callaway@acl.hhs.gov,* 202–795–7319.

2. Submission Dates and Times

To receive consideration, applications must be submitted by 11:59 p.m. Eastern Time on April 21, 2021, through *www.GrantSolutions.gov.*

VII. Agency Contacts

1. Programmatic Issues

Direct programmatic inquiries to your program officer:

ACL Regions I, II, III, IV, and VI, Pamela O'Brien, Email: *Pamela.Obrien@acl.hhs.gov,* Phone: 202–795–7417

ACL Regions V, VII, VIII, IX, and X, Shawn Callaway, Email: *Shawn.Callaway@acl.hhs.gov,* Phone: 202–795–7319

2. Submission Issues

Direct inquiries regarding submission of the Letters of Assurance to the appropriate ACL Program Officer found in the table in ''Section IV. Submission Information.''

Dated: April 1, 2021.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2021–07128 Filed 4–6–21; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Availability of Program Application Instructions for the State Councils on Developmental Disabilities To Expand COVID–19 Vaccine Access for People With Disabilities

Title: Expanding Disabilities Network's (DD Councils) Access to COVID–19 Vaccines.

Announcement Type: Initial.

Statutory Authority: Subtitle B of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act).

Catalog of Federal Domestic Assistance (CFDA) Number: 93.630.

DATES: The deadline date for the submission of the Expanding Disabilities Network's (DD Councils) Access to COVID–19 Vaccines is 11:59 p.m. April 21, 2021.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

The Administration for Community Living (ACL) announced a new funding opportunity to increase vaccine access for people with disabilities. With funding and partnership support from the Centers for Disease Control and Prevention (CDC), ACL is providing grants to disability networks to provide critical services to help communities combat COVID–19. A leading priority of this joint effort is to ensure vaccines are equally accessible to the disability population.

Approximately 61 million adults living with in the U.S. have a disability, representing approximately 26 percent of the adult population. People with disabilities may have an increased risk for contracting COVID–19 based on where they live or the services they receive. Some people with disabilities live in group settings which places them at higher risk for acquiring COVID–19 in comparison to people without disabilities. People with disabilities may also require close contact with direct service providers, including personal care attendants or other care providers, who help with activities of daily living. Moreover, many people with disabilities have underlying health conditions (*e.g.* diabetes, heart disease, and obesity) that increases the risk of severe illness due to COVID–19. In addition, research has also found that people with Down Syndrome are significantly more likely to be hospitalized from COVID–19 than the general population.

There are increasing reports of barriers and unequal access in communities to vaccinate people with disabilities. For example, some people with disabilities may experience difficulties scheduling appointments, communicating, obtaining accessible transportation or require direct support services to attend vaccination appointments. Others living in the community may be isolated or unable to leave their home and may require in-home vaccination.

This funding opportunity is designed to breakdown those barriers to expand vaccine access in communities. Examples of activities consistent with the purpose of this funding are the following:

- Education about the importance of receiving a vaccine,
- Identifying people unable to independently travel to a vaccination site,
- Helping with scheduling a vaccine appointment,
- Arranging or providing accessible transportation,
- Providing companion/personal support,
- Reminding people of the second vaccination appointment if needed, and/or
- Providing technical assistance to local health departments or other entities on vaccine accessibility.

Awards authorized under Subtitle B of the DD Act, State DD Councils, shall be provided funding under this opportunity. Award recipients will be required to submit annual progress reports on the activities conducted, challenges, successes, and lessons learned and provide a written summary. In addition, to show impact of the grant awards, the grantee will include the number of people served or impacted by the services provided against each of the activities chosen to be implemented. To be eligible to receive this grant, the grantee must submit a Letter of Assurance to ACL containing all of the assurances required, (see below, ''Section III. Eligibility Criteria and Other Requirements'' and ''Section IV. Submission Information''). DD Councils who do not complete assurance requirements below, or otherwise indicate no desire to receive funds will be excluded from receiving funds.

ACL may establish ad hoc dates based on the need of the COVID–19 response, *e.g.,* to meet unanticipated issues related to COVID–19 and/or to allow impacted eligible applicants that missed the cut-off date to submit an application for consideration. ACL intends to issue initial notices of award as applications are received prior to the application due date to address urgent COVID–19 response needs. Second notices of award are planned after the actual number of applicants is finalized.

II. Award Information

1. Funding Instrument Type

These awards will be made in the form of formula grants to State DD Councils.

2. Anticipated Total Funding per Budget Period

Under this program announcement, ACL intends to make grant awards to each State and territory, and the District of Columbia. Awards made under this announcement have an estimated start date of April 14, 2021 and an estimated end date of September 30, 2022, for a 17-month budget and performance period.

The total available funding for this opportunity is $4,000,000. Funding will be distributed based on the state/territory population. There are no cost-sharing nor match requirements. Below are the projected award amounts:

State/territory	Projected amount
Alabama	$55,219
Alaska	26,695
Arizona	81,973
Arkansas	33,986
District of Columbia	26,695
Florida	241,881
Georgia	119,573
Hawaii	26,695
Idaho	26,695
Illinois	142,710
Indiana	75,818
Iowa	35,532
Kansas	32,810
Kentucky	50,315
Nevada	34,689
New Hampshire	26,695
New Jersey	100,031
New Mexico	26,695
New York	219,085
North Carolina	118,116
North Dakota	26,695
California	444,985
Colorado	64,855
Connecticut	40,152
Delaware	26,695
Louisiana	52,355
Maine	26,695
Maryland	68,086
Massachusetts	77,623
Michigan	112,472
Minnesota	63,513
Mississippi	33,517
Missouri	69,119
Montana	26,695
Nebraska	26,695
Ohio	131,642
Oklahoma	44,563
Oregon	47,500
Pennsylvania	144,176
Rhode Island	26,695
South Carolina	57,985
South Dakota	26,695
Tennessee	76,910
Texas	326,551
Utah	36,105
Vermont	26,695
Virginia	96,127
Washington	85,759
West Virginia	26,695
Wisconsin	65,572
Wyoming	26,695
American Samoa	13,902
Guam	13,902
Northern Marianas	13,902
Puerto Rico	35,967
Virgin Islands	13,902

III. Eligibility Criteria and Other Requirements

1. Eligible Entities

The eligible entity for these awards is the agency designated as a State DD Council in each state or territory.

2. Other Requirements

A. Letter of Assurance

A Letter of Assurance is required to be submitted by the eligible entity in order to receive an award. The Letter of Assurance must include the following:

1. Assurance that the award recipient is the agency or entity designated as the State DD Council in the state or territory.

2. Assurance that funds will supplement and not supplant existing State DD Council funding.

3. Assurance that funds will be spent in ways consistent with the purpose of the funding in carrying out one or more of the following activities:

- Education about the importance of receiving a vaccine,
- Identifying people unable to independently travel to a site,
- Helping with scheduling a vaccine appointment,
- Arranging or providing accessible transportation,
- Providing companion/personal support,
- Reminding people of their second vaccination appointment if needed, and/or,
- Providing technical assistance to local health departments or other entities on vaccine accessibility.

1. Assurance that the award recipient will do outreach to Aging and Disability Resource Centers, Centers for Independent Living, State Councils on Developmental Disabilities, and University Centers for Excellence in Developmental Disabilities to maximize state coordination wherever possible.

4. Assurance to provide semi-annual federal financial reports and annual program reports that describes activities conducted, challenges, successes, and lessons learned. The written summary will also include number of people served or impacted by the services provided.

B. DUNS Number

All grant applicants must obtain and keep current a D–U–N–S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D–U–N–S number can be obtained from: *https://iupdate.dnb.com/iUpdate/viewiUpdateHome.htm.*

C. Intergovernmental Review

Executive Order 12372, Intergovernmental Review of Federal Programs, is not applicable to these grant applications.

IV. Submission Information

1. Letter of Assurance

To receive funding, eligible entities must provide a Letter of Assurance containing all the information outlined in Section III above.

Letters of Assurance should be addressed to: Alison Barkoff, Acting Administrator and Assistant Secretary for Aging, Administration for Community Living, 330 C Street SW, Washington, DC 20201.

Letters of Assurance should be submitted electronically via email to your ACL program officer. The following table identifies the designated program officer against each of the 10 ACL regions:

	ACL regions	Email/phone
Sara Newell-Perez, Program Officer	• *Region I:* CT, MA, ME, NH, RI, VT • *Region II:* NY, NJ, PR, VI • *Region III:* DC, DE, MD, PA, VA, WV • *Region IV:* AL, FL, GA, KY, MS, NC, SC, TN • *Region VI:* AR, LA, OK, NM, TX	*sara.newell-perez@acl.hhs.gov*, 202–795–7374.
Shawn Callaway, Program Officer	• *Region V:* IL, IN, MI, MN, OH, WI • *Region VII:* IA, KS, MO, NE • *Region VIII:* CO, MT, UT, WY, ND, SD • *Region IX:* CA, NV, AZ, HI, GU, CNMI, AS • *Region X:* AK, ID, OR, WA	*shawn.callaway@acl.hhs.gov*, 202–795–7319.

2. Submission Dates and Times

To receive consideration, Letters of Assurance must be submitted by 11:59 p.m. Eastern Time on April 21, 2021. Letters of Assurance should be submitted electronically via email and have an electronic time stamp indicating the date/time submitted.

VII. Agency Contacts

1. Programmatic Issues

Direct programmatic inquiries to your program officer:

ACL Regions I, II, III, IV, and VI—Sara Newell-Perez, *Email: Sara.Newell-Perez@acl.hhs.gov, Phone:* 202–795–7374

ACL Regions V, VII, VIII, IX, and X—Shawn Callaway, *Email: Shawn.Callaway@acl.hhs.gov, Phone:* 202–795–7319

2. Submission Issues

Direct inquiries regarding submission of the Letters of Assurance to the appropriate ACL Program Officer found in the table in ''Section IV. Submission Information.''

Dated: April 1, 2021.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2021–07126 Filed 4–6–21; 8:45 am]

BILLING CODE 4154–01–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; Small Business: Non-Viral Anti-Infective Therapeutics.

Date: April 20, 2021.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bidyottam Mittra, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20894, 301–435–4057, *bidyottam.mittra@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 1, 2021.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–07111 Filed 4–6–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Advisory Council; Notice of Charter Renewal

In accordance with Title 41 of the U.S. Code of Federal Regulations, Section 102–3.65(a), notice is hereby given that the Charter for the Center for Scientific Review Advisory Council was renewed for an additional two-year period on March 31, 2021.

It is determined that the Center for Scientific Review Advisory Council is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Claire Harris, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or *harriscl@mail.nih.gov.*

Dated: April 1, 2021.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–07103 Filed 4–6–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2116]

Changes in Flood Hazard Determinations

Correction

In notice document 2021–04981, appearing on pages 13728–13730, in the issue of Wednesday, March 10, 2021, make the following correction:

The table appearing on pages 13729–13730 should read as set forth below.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:						
Maricopa	Unincorporated Areas of Maricopa County (21–09–0181X).	The Honorable Jack Sellers, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 30, 2021	040037
Mohave	City of Bullhead City (20–09–0730P).	The Honorable Tom Brady, Mayor, City of Bullhead City, 2355 Trane Road, Bullhead City, AZ 86442.	Public Works Department, 2355 Trane Road, Bullhead City, AZ 86442.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 9, 2021	040125
California:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Orange	City of Huntington Beach (20–09–0545P).	The Honorable Lyn Semeta, Mayor, City of Huntington Beach, 2000 Main Street, Huntington Beach, CA 92648.	City Hall, 2000 Main Street, Huntington Beach, CA 92648.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 17, 2020	065034
Orange	Unincorporated Areas of Orange County (20–09–0545P).	The Honorable Michelle Steel, Chair, Board of Supervisors, Orange County, 333 West Santa Ana Boulevard, Santa Ana, CA 92701.	Orange County Flood Control Division, H.G. Osborne Building, 300 North Flower Street 7th Floor, Santa Ana, CA 92703.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 17, 2020	060212
Sacramento	Unincorporated Areas of Sacramento County (20–09–0760P).	The Honorable Phil Serna, Chairman, Board of Supervisors, Sacramento County, 700 H Street, Suite 2450, Sacramento, CA 95814.	Sacramento County, Department of Water Resources, 827 7th Street, Room 301, Sacramento, CA 95814.	*https://msc.fema.gov/portal/advanceSearch.*	May 11, 2021	060262
San Bernardino.	City of San Bernardino (20–09–1133P).	The Honorable John Valdivia, Mayor, City of San Bernardino, 290 North D Street, San Bernardino, CA 92401.	City Hall, 300 North D Street, San Bernardino, CA 92418.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 28, 2021	060281
San Bernardino.	Unincorporated Areas of San Bernardino County (20–09–1133P).	The Honorable Curt Hagman, Chairman, Board of Supervisors, San Bernardino County, 385 North Arrowhead Avenue, 5th Floor, San Bernardino, CA 92415.	San Bernardino County Public Works, Water Resources Department, 825 East 3rd Street, San Bernardino, CA 92415.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 28, 2021	060270
San Mateo County.	City of Belmont (20–09–1412P).	The Honorable Charles Stone, Mayor, City of Belmont, 1 Twin Pines Lane, Belmont, CA 94002.	Public Works Department, 1 Twin Pines Lane, Belmont, CA 94002.	*https://msc.fema.gov/portal/advanceSearch.*	May 20, 2021	065016
Illinois:						
Cook	City of Markham (20–05–2119P).	The Honorable Roger A. Agpawa, Mayor, City of Markham, 16313 Kedzie Parkway, Markham, IL 60428.	City Hall, 16313 South Kedzie Parkway, Markham, IL 60428.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 16, 2021	175169
Cook	Unincorporated Areas of Cook County (20–05–2119P).	The Honorable Toni Preckwinkle, County Board President Cook County, 118 North Clark Street, Room 537, Chicago, IL 60602.	Cook County Building and Zoning Department, 69 West Washington, Suite 2830, Chicago, IL 60602.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 16, 2021	170054
DuPage	Village of Lisle (20–05–3529P).	The Honorable Christopher Pecak, Mayor, Village of Lisle, 925 Burlington Avenue, Lisle, IL 60532.	Village Hall, 925 Burlington Avenue, Lisle, IL 60532.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 1, 2021	170211
Will	City of Lockport (21–05–0834P).	The Honorable Steven Streit, Mayor, City of Lockport, 222 East 9th Street, Lockport, IL 60441.	Public Works and Engineering, 17112 South Prime Boulevard, Lockport, IL 60441.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 11, 2021	170703
Will	Unincorporated Areas of Will County (21–05–0834P).	The Honorable Jennifer Bertino-Tarrant, Will County Executive, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	Land Use Department, 58 East Clinton Street, Suite 100, Joliet, IL 60432.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 11, 2021	170695
Indiana: Marion	City of Indianapolis (20–05–3684P).	The Honorable Joe Hogsett, Mayor, City of Indianapolis, 200 East Washington Street, Suite 2501, Indianapolis, IN 46204.	City Hall, 1200 Madison Avenue, Suite 100, Indianapolis, IN 46225.	*https://msc.fema.gov/portal/advanceSearch.*	May 24, 2021	180159
Kansas:						
Leavenworth	City of Basehor (20–07–1131P).	The Honorable David Breuer, Mayor, City of Basehor, P.O. Box 406, Basehor, KS 66007.	City Hall, 2620 North 155th Street, Basehor, KS 66007.	*https://msc.fema.gov/portal/advanceSearch.*	May 12, 2021	200187
Leavenworth	Unincorporated Areas of Leavenworth County (20–07–1131P).	Mr. Doug Smith, Chairman, Board of County Commissioners Leavenworth County, 300 Walnut Street, Suite 225, Leavenworth, KS 66048.	Leavenworth County Courthouse, 300 Walnut Street, Leavenworth, KS 66048.	*https://msc.fema.gov/portal/advanceSearch.*	May 12, 2021	200186

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Michigan: Macomb.	City of Fraser (20–05–3517P).	The Honorable Michael Carnagie, Mayor, City of Fraser, 33000 Garfield Road, Fraser, MI 48026.	City Hall, 33000 Garfield Road, Fraser, MI 48026.	*https://msc.fema.gov/portal/advanceSearch.*	May 28, 2021	260122
Missouri: Jasper	City of Joplin (20–07–1062P).	The Honorable Ryan Stanley, Mayor, City of Joplin, City Hall, 5th Floor, 602 South Main Street, Joplin, MO 64801.	City Hall, 602 South Main Street, Joplin, MO 64801.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 3, 2021	290183
Washington: Jefferson.	Unincorporated Areas of Jefferson County (20–10–1157P).	Ms. Kate Dean, County Commissioner, Jefferson County Board of County Commissioners, P.O. Box 1220, Port Townsend, WA 98368.	Jefferson County Department of Community Development, 621 Sheridan Street, Port Townsend, WA 98368.	*https://msc.fema.gov/portal/advanceSearch.*	May 11, 2021	530069
Wisconsin: Kenosha.	Village of Somers (17–05–6202P).	Mr. George Stoner, Board of Trustees President, Village of Somers, 7511 12th Street, Kenosha, WI 53171.	Village Hall, 7511 12th Street, Kenosha, WI 53144.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 14, 2021	550406

[FR Doc. C1–2021–04981 Filed 4–5–21; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2110]

Proposed Flood Hazard Determinations

Correction

In notice document 2021–04143, appearing on pages 12015–12016, in the issue of Monday, March 1, 2021, make the following correction:

The tables appearing on pages 12015–12016 should read as set forth below.

Community	Community map repository address
Madison County, Georgia and Incorporated Areas Project: 18–04–0003S Preliminary Date: May 27, 2020	
Unincorporated Areas of Madison County	Madison County Government Courthouse, Building and Zoning Office, 91 Albany Avenue, Danielsville, GA 30633.
Oglethorpe County, Georgia and Incorporated Areas Project: 18–04–0003S Preliminary Date: May 27, 2020	
City of Maxeys	Maxeys City Hall, 369 South Main Street, Stephens, GA 30667.
Unincorporated Areas of Oglethorpe County	Oglethorpe County Board of Commissioners Office, 105 Union Point Road, Lexington, GA 30648.
Butte-Silver Bow County, Montana (All Jurisdictions) Project: 20–08–0038S Preliminary Date: August 28, 2020	
Butte-Silver Bow County	Butte-Silver Bow Courthouse, 155 West Granite Street, Room 108, Butte, MT 59701.
Cannon County, Tennessee and Incorporated Areas Project: 18–04–0025S Preliminary Date: February 13, 2020	
Town of Woodbury	Town Hall, 101 West Water Street, Woodbury, TN 37190.
Unincorporated Areas of Cannon County	Cannon County Court House, 200 West Main Street, Woodbury, TN 37190.
Rutherford County, Tennessee and Incorporated Areas Project: 18–04–0025S Preliminary Date: February 13, 2020	
City of La Vergne	Planning and Codes Department, 5175 Murfreesboro Road, La Vergne, TN 37086.
City of Murfreesboro	City Hall, 111 West Vine Street, Murfreesboro, TN 37130.
Town of Smyrna	Town Hall, 315 South Lowry Street, Smyrna, TN 37167.

Community	Community map repository address
Unincorporated Areas of Rutherford County	Rutherford County Planning Department, 1 South Public Square, Room 200, Murfreesboro, TN 37130.
Wilson County, Tennessee and Incorporated Areas Project: 18–04–0025S Preliminary Date: February 13, 2020	
City of Mt. Juliet	City Hall, 2425 North Mount Juliet Road, Mt. Juliet, TN 37122.
Unincorporated Areas of Wilson County	Wilson County Court House, Planning Office, 228 East Main Street, Room 5, Lebanon, TN 37087.
Dinwiddie County, Virginia and Incorporated Areas Project: 19–03–0016S Preliminary Date: September 30, 2020	
Unincorporated Areas of Dinwiddie County	Dinwiddie County Government Center, 14010 Boydton Plank Road, Dinwiddie, VA 23841.
Fauquier County, Virginia and Incorporated Areas Project: 14–03–3327S Preliminary Date: September 15, 2020	
Town of Remington	Town Office, 105 East Main Street, Remington, VA 22734.
Town of The Plains	Post Office, 4314 Fauquier Avenue, The Plains, VA 20198.
Town of Warrenton	Town Office, 21 Main Street, Warrenton, VA 20186.
Unincorporated Areas of Fauquier County	Fauquier County GIS Department, 29 Ashby Street, Warrenton, VA 20186.
Prince William County, Virginia and Incorporated Areas Project: 14–03–3327S Preliminary Date: September 30, 2020	
City of Manassas	Public Works Building, Engineering Department, 8500 Public Works Drive, Manassas, VA 20110.
City of Manassas Park	City Hall, 1 Park Center Court, Manassas Park, VA 20111.
Town of Dumfries	Town Hall, Zoning Administrator's Office, 17739 Main Street, Suite 200, Dumfries, VA 22026.
Town of Haymarket	Town Hall, 15000 Washington Street, Suite 100, Haymarket, VA 20169.
Town of Occoquan	Town Clerk's Office, 314 Mill Street, Occoquan, VA 22125.
Town of Quantico	Town Hall, 337 5th Avenue, Quantico, VA 22134.
Unincorporated Areas of Prince William County	Prince William County Department of Public Works, Watershed Management Branch, 5 County Complex Court, Prince William, VA 22192.

[FR Doc. C1–2021–04143 Filed 4–5–21; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2021–0005]

Notice of President's National Security Telecommunications Advisory Committee Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security.

ACTION: Notice of *Federal Advisory Committee Act* (FACA) meeting; request for comments.

SUMMARY: CISA is publishing this notice to announce the following President's National Security Telecommunications Advisory Committee (NSTAC) meeting. This meeting will be open to the public.

DATES:

Meeting Registration: Registration to attend the meeting is required and must be received no later than 5:00 p.m. Eastern Time (ET) on April 29, 2021. For more information on how to participate, please contact *NSTAC@cisa.dhs.gov.*

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5:00 p.m. ET on April 29, 2021.

Written Comments: Written comments must be received no later than 5:00 p.m. ET on April 29, 2021.

Meeting Date: The NSTAC will meet on May 6, 2021, from 12:00 p.m. to 2:00 p.m. ET. The meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held via conference call. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance, please email *NSTAC@cisa.dhs.gov* by 5:00 p.m. ET on April 29, 2021.

Comments: Members of the public are invited to provide comment on the issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials that may be discussed during the meeting will be made available for review at *https://www.cisa.gov/nstac* on April 21, 2021. Comments may be submitted by 5:00 p.m. ET on April 29, 2021 and must be identified by Docket Number CISA–2021–0005. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Please follow the instructions for submitting written comments.
- *Email: NSTAC@cisa.dhs.gov.* Include the Docket Number CISA–2021–0005 in the subject line of the email.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the Docket Number for this action. Comments received will be posted without alteration to *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket and comments received by the NSTAC,

please go to *www.regulations.gov* and enter docket number CISA–2021–0005.

A public comment period is scheduled to be held during the meeting from 1:25 p.m. to 1:35 p.m. ET. Speakers who wish to participate in the public comment period must email *NSTAC@cisa.dhs.gov* to register. Speakers should limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Sandra Benevides, 202–603–1225, *NSTAC@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The NSTAC was established by Executive Order (E.O.) 12382, 47 FR 40531 (September 13, 1982), as amended and continued under the authority of E.O. 13889, dated September 27, 2019. Notice of this meeting is given under FACA, 5 U.S.C. Appendix (Pub. L. 92–463). The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications and cybersecurity policy.

Agenda: The NSTAC will hold a conference call on Thursday, May 6, 2021, to discuss current NSTAC activities and the Government's ongoing cybersecurity and NS/EP communications initiatives. This meeting is open to the public and will include: (1) A keynote address on the current Administration's homeland security priorities; (2) a panel discussion with Government and industry on the NS/EP challenges to adopting zero-trust networking; and (3) a deliberation vote on the *NSTAC Report to the President on Communications Resiliency.*

Sandra J. Benevides,

Designated Federal Officer, NSTAC, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2021–07135 Filed 4–6–21; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0126]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Collection of Qualitative Feedback Through Focus Groups

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until May 7, 2021.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2012–0004. All submissions received must include the OMB Control Number 1615–0126 in the body of the letter, the agency name and Docket ID USCIS–2012–0004.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on November 23, 2020, at 86 FR 74749, allowing for a 60-day public comment period. USCIS did receive one comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2012–0004 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used

(3) Enhance the quality, utility, and clarity of the information to be collected; 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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Collection of Qualitative Feedback through Focus Groups.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Form; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households; Business or other for-profit; Not-for-profit institutions. Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that our programs are effective and meet our customers' needs, Department of Homeland Security/U.S. Citizenship and Immigration Services seeks to obtain OMB approval of a generic clearance to collect qualitative feedback on our service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for this information collection is 25,000 and the estimated hour burden per response is 1.5 hours. In the 60-day FRN published on November 23, 2020, USCIS estimated the total number of respondents at 3,000. However, in this 30-day FRN, USCIS increased the estimated number of respondents to 25,000 in anticipation of higher survey participation rates.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 37,500 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0. There is no cost to participate and there is no mailing cost as it is an electronic submission.

Dated: April 2, 2021.

Jerry L Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2021–07163 Filed 4–6–21; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–IMR–SAAN–30891; PS.SIMLA0090.00.1]

Minor Boundary Revision at San Antonio Missions National Historical Park

AGENCY: National Park Service, Interior.

ACTION: Notification of boundary revision.

SUMMARY: Notice is hereby given that the boundary of San Antonio Missions National Historical Park is modified to include one additional tract of land, which is immediately adjacent to the Park boundary and is approximately 42.51 acres of vacant land located in Bexar County, Texas. The National Park Service has determined that inclusion of tract 107–29 will provide preservation of key Cultural Landscapes that will almost complete the protection of the Mission San Juan labores. The property will be purchased by the United States from a willing seller.

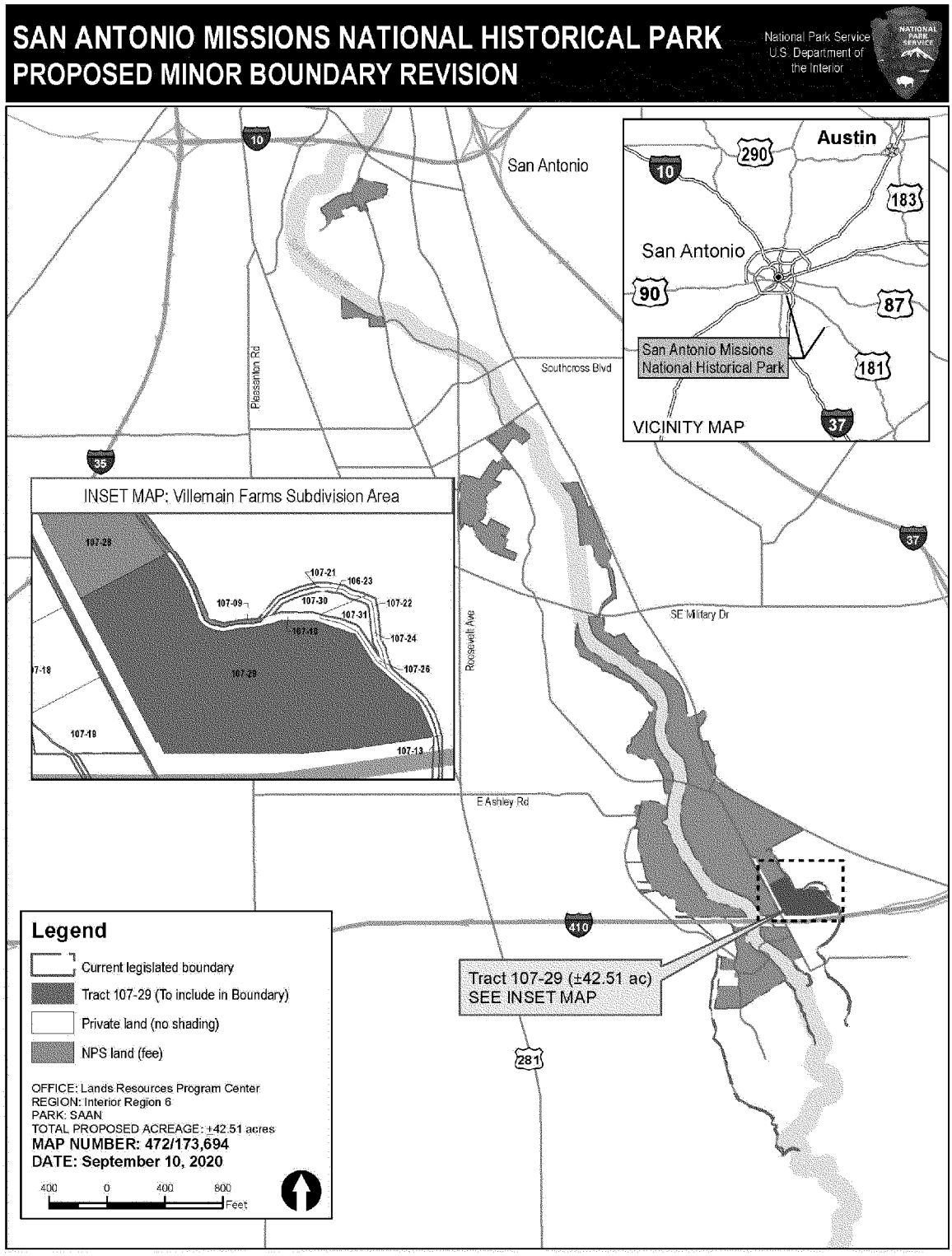
DATES: The effective date of this boundary revision is April 7, 2021.

ADDRESSES: The map depicting the boundary revision is available for inspection at the following locations: National Park Service, Interior Regions 6, 7 & 8, Land Resources Program Center, 12795 West Alameda Parkway, Denver, Colorado 80228 and National Park Service, Department of the Interior, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Deputy Realty Officer Heather Horton, National Park Service, Interior Regions 6, 7 & 8, Land Resources Program Center, 12795 West Alameda Parkway, Denver, Colorado 80228, telephone 720–620–0995.

SUPPLEMENTARY INFORMATION: San Antonio Missions National Historical Park's enabling legislation authorizes the National Park Service (NPS) to make minor boundary revisions ''when necessary.'' Public Law 95–629, 16 U.S.C. 410ee(a)(4) and 16 U.S.C. 410ee(b)(1)(H), provide that, after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, the Secretary of the Interior may make minor revisions to the boundaries of an area of the National Park System by publication of a revised boundary map or other description in the **Federal Register**. This action will add tract 107–29 containing 42.51 acres, more or less, to San Antonio Missions National Historical Park. The referenced tract for the boundary revision is depicted on Map No. 472/173,694 dated September 10, 2020.

BILLING CODE 4312–52–P



Michael T. Reynolds,

Regional Director, Interior Regions 6,7 & 8.

[FR Doc. 2021–07101 Filed 4–6–21; 8:45 am]

BILLING CODE 4312–52–C

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0012; DS63644000 DRT000000.CH7000 212D1113RT]

Major Portion Prices and Due Date for Additional Royalty Payments on Gas Produced From Indian Lands in Designated Areas That Are Not Associated With an Index Zone

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice.

SUMMARY: In accordance with regulations governing valuation of gas produced from Indian lands, the Office of Natural Resources Revenue (ONRR) is publishing this notice in the **Federal Register** of the major portion prices applicable to calendar year 2019 and the date by which a lessee must report and pay any additional royalties due under major portion pricing.

DATES: The due date to pay additional royalties based on the major portion prices is May 31, 2021.

FOR FURTHER INFORMATION CONTACT: For questions regarding major portion prices, contact Robert Sudar, Market & Spatial Analytics, at (303) 231–3511 or email to *Robert.Sudar@onrr.gov.* For questions regarding royalty reporting and payment, contact Lee-Ann Martin, Reference & Reporting Management, at (303) 231–3313 or email to *Leeann.Martin@onrr.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 30 CFR 1206.174(a)(4)(ii), ONRR must publish major portion prices for each designated area that is not associated with an index zone for each production month, as well as the due date to submit any additional royalty payments. If a lessee owes additional royalties, it must submit an amended form ONRR–2014, Report of Sales and Royalty Remittance to ONRR and pay the additional royalties due by the due date. If a lessee fails to timely pay the additional royalties, late payment interest begins to accrue pursuant to 30 CFR 1218.54. The interest will accrue from the due date until ONRR receives payment.

The table below lists major portion prices for all designated areas that are not associated with an index zone. The due date to pay additional royalties based on the major portion prices is May 31, 2021.

GAS MAJOR PORTION PRICES ($/MMBtu) FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

ONRR-designated areas	Jan 2019	Feb 2019	Mar 2019	Apr 2019	May 2019	Jun 2019	Jul 2019	Aug 2019	Sep 2019	Oct 2019	Nov 2019	Dec 2019
Blackfeet Reservation	$1.63	$2.34	$2.12	$0.76	$1.34	$0.56	$1.08	$0.74	$0.60	$1.68	$2.22	$1.91
Fort Berthold Reservation	3.48	2.37	2.47	2.02	1.96	1.67	1.55	1.52	1.49	1.57	2.06	2.10
Fort Peck Reservation	4.44	3.17	2.74	2.36	2.03	2.04	1.56	1.77	1.62	1.76	2.38	2.54
Navajo Allotted Leases in the Navajo Reservation	3.25	2.78	2.21	1.27	1.28	1.52	1.78	1.76	1.77	1.54	2.11	2.35
Turtle Mountain Reservation	3.28	2.17	1.81	1.48	1.22	1.26	1.55	1.53	1.41	1.52	2.06	1.72

For information on how to report additional royalties due to major portion prices, please refer to ONRR's Dear Payor letter, dated December 1, 1999, which is available at *https://www.onrr.gov/ReportPay/PDFDocs/991201.pdf.*

Authority: Indian Mineral Leasing Act, 25 U.S.C. 396a–g and the Act of March 3, 1909, 25 U.S.C. 396; Indian Mineral Development Act of 1982, 25 U.S.C. 2103 *et seq.*

Kimbra G. Davis,

Director for Office of Natural Resources Revenue.

[FR Doc. 2021–07092 Filed 4–6–21; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On March 30, 2021, the Department of Justice lodged a proposed consent decree with the United States District Court for the Southern District of Illinois in the lawsuit entitled *United States and Illinois* v. *XTRA Intermodal, Inc. and X-L-Co., Inc.*, Civil Action No. 3:21–cv–00339.

The proposed Consent Decree (1) resolves the liability of XTRA Intermodal, Inc. and X-L-Co., Inc. (collectively ''XTRA'') under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9606–9607, for cleanup activities and natural resource damages at the Old American Zinc Plant Superfund Site located in Fairmont City and Washington Park, Illinois (the ''Site''), on an ability-to-pay basis; and (2) resolves potential CERCLA counterclaims by XTRA against the United States. The proposed Consent Decree requires XTRA to confess to entry of a judgment in favor of the United States in the amount of $41,472,032 for past and future response costs and in favor of the State of Illinois in the amount of $528,250 for natural resource damages, to be satisfied through a $2 million monetary payment, sale of the portion of the Site currently owned by XTRA, and attempted recovery of insurance proceeds. The United States, on behalf of the General Services Administration, will resolve its alleged Site-related CERCLA liabilities through payment of $37,106,035 to the U.S. Environmental Protection Agency for past and future response costs and $471,750 to Illinois for natural resource damages.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and Illinois* v. *XTRA Intermodal, Inc. and X-L-Co., Inc.*, D.J. Ref. Nos. 90–11–3–11215 and 90–11–6–20288. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library,

U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $10.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Patricia S. McKenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–07183 Filed 4–6–21; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Opportunity To Comment on Proposed Consent Decree Under the Clean Air Act

On April 1, 2021, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Washington in the lawsuit entitled *United States* v. *Multistar Industries, Inc.,* Civil Action No. 2:21–cv–130–SMJ.

This Consent Decree settles claims against Multistar Industries, Inc. (''Multistar'') set forth in the Complaint filed contemporaneously with the lodging of the Consent Decree. The complaint includes claims under Section 113 of the Clean Air Act (CAA) for violations of the risk management program requirements of CAA Section 112(r) and Section 113(a)(3) for violations of an administrative compliance order. These violations occurred at Multistar's chemical storage and distribution facility in Othello, Washington.

The Consent Decree resolves these claims by requiring a penalty payment of $135,000 plus the decree establishes a three year stipulated penalty structure wherein Multistar is obligated to submit reports as to its operations and comply with the risk management program requirements of CAA § 112(r)(7) or be subject to stipulated penalties.

This publication of this notice holds opens the period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Multistar Industries, Inc.,* Civil Action No. 2:21–cv–130–SMJ, D.J. Ref. No. 90–5–2–1–12000/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $9.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–07134 Filed 4–6–21; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2019–0008]

Ballard Marine Construction; Withdrawal of Application for Variance and Revocation of Interim Order

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the revocation of the Interim Order granted to the applicant, Ballard Marine Construction (Ballard), from provisions of OSHA's standard for work in compressed air environments, and further announces the applicant's withdrawal of the application for a permanent variance.

DATES: The revocation of the interim order specified by this notice becomes effective on April 7, 2021.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of Withdrawal of Application for Permanent Variance and Revocation of Interim Order

On January 19, 2021, OSHA granted Ballard an Interim Order (86 FR 5253), which permitted the employer to comply with alternative conditions instead of complying with the requirements of the OSHA's compressed air standard, 29 CFR 1926.803. Further, the Interim Order stated that it was to remain in effect through the duration of the Suffolk County Outfall Tunnel Project. Ballard notified OSHA by letter dated February 17, 2021 (OSHA–2019–0008–0012) that its portion of the Suffolk County Outfall Tunnel Project was complete, and that for this reason, the applicant was withdrawing their application for a permanent variance.

OSHA hereby revokes the Interim Order granted to Ballard on January 19, 2021 (86 FR 5253).

II. Authority and Signature

James S. Frederick, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to Section 29 U.S.C. 655(6)(d), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1905.11.

Signed at Washington, DC, on March 31, 2021.

James S. Frederick,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–07133 Filed 4–6–21; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0040]

SGS North America, Inc.: Application for Expansion of Recognition and Proposed Modification to the NRTL Program's List of Appropriate Test Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of SGS North America, Inc., for expansion of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application. Additionally, OSHA proposes to add five test standards to the NRTL Program's list of appropriate test standards.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before April 22, 2021.

ADDRESSES: Submit comments by any of the following methods:

Electronically: You may submit comments and attachments electronically at: *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2006–0040, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. *Please note:* While OSHA's docket office is continuing to accept and process submissions by regular mail, due to the COVID–19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the rulemaking record by express delivery, hand delivery, and messenger service.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2006–0040). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office.

Extension of comment period: Submit requests for an extension of the comment period on or before April 22, 2021 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

The Occupational Safety and Health Administration is providing notice that SGS North America, Inc. (SGS) is applying for an expansion of current recognition as a NRTL. SGS requests the addition of five test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes: (1) The type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including SGS, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

SGS currently has nine facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: SGS North America, Inc., 620 Old Peachtree Road, Suwanee, Georgia 30024. A complete list of SGS's scope of recognition is available at *https://www.osha.gov/dts/otpca/nrtl/sgs.html.*

II. General Background on the Application

SGS submitted an application to OSHA to expand recognition as a NRTL to include five additional test standards on May 16, 2019 (OSHA–2006–0040–0058). OSHA staff performed a detailed analysis of the application packets and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to these applications.

Table 1 lists the appropriate test standards found in SGS's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN SGS'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
* UL 62841–2–1	Electric Motor-Operated Hand-Held Tools, Transportable Tools And Lawn And Garden Machinery—Part 2–1: Particular Requirements for Hand-Held Drills and Impact Drills.
* UL 62841–2–10	Electric Motor-Operated Hand-Held Tools, Transportable Tools And Lawn And Garden Machinery—Part 2–10: Particular Requirements for Hand-Held Mixers.
* UL 62841–2–21	Electric Motor-Operated Hand-Held Tools, Transportable Tools And Lawn And Garden Machinery—Part 2–21: Particular Requirements for Hand-Held Drain Cleaners.
* UL 62841–3–13	Electric Motor-Operated Hand-Held Tools, Transportable Tools And Lawn And Garden Machinery—Part 3–13: Particular Requirements for Transportable Drills.
* UL 60745–2–23	Hand-Held Motor-Operated Electric Tools—Safety—Part 2–23: Particular Requirements for Die Grinders and Small Rotary Tools.

* Represents the standards that OSHA proposes to add to the NRTL Program's List of Appropriate Test Standards.

III. Proposal To Add New Test Standards to the NRTL Program's List of Appropriate Test Standards

Periodically, OSHA will propose to add new test standards to the NRTL list of appropriate test standards following an evaluation of the test standard document. To qualify as an appropriate test standard, the agency evaluates the document to: (1) Verify it represents a product category for which OSHA requires certification by a NRTL; (2) verify the document represents an end product and not a component; and (3) verify the document defines safety test specifications (not installation or operational performance specifications). OSHA becomes aware of new test standards through various avenues. For example, OSHA may become aware of new test standards by: (1) Monitoring notifications issued by certain Standards Development Organizations; (2) reviewing applications by NRTLs or applicants seeking recognition to include new test standard in their scopes of recognition; and (3) obtaining notification from manufacturers, manufacturing organizations, government agencies, or other parties. OSHA may determine to include a new test standard in the list, for example, if the test standard is for a particular type of product that another test standard also covers or it covers a type of product that no standard previously covered.

In this notice, OSHA proposes to add five new test standards to the NRTL Program's list of appropriate test standards. Table 2, below, lists the test standards that are new to the NRTL Program. OSHA preliminarily determined that these test standards are appropriate test standards and proposes to include them in the NRTL Program's list of appropriate test standards. OSHA seeks public comment on this preliminary determination.

TABLE 2—STANDARDS OSHA IS PROPOSING TO ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 62841–2–1	Electric Motor-Operated Hand-Held Tools, Transportable Tools And Lawn And Garden Machinery—Part 2–1: Particular Requirements for Hand-Held Drills and Impact Drills.
UL 62841–2–10	Electric Motor-Operated Hand-Held Tools, Transportable Tools And Lawn And Garden Machinery—Part 2–10: Particular Requirements for Hand-Held Mixers.
UL 62841–2–21	Electric Motor-Operated Hand-Held Tools, Transportable Tools And Lawn And Garden Machinery—Part 2–21: Particular Requirements for Hand-Held Drain Cleaners.
UL 62841–3–13	Electric Motor-Operated Hand-Held Tools, Transportable Tools And Lawn And Garden Machinery—Part 3–13: Particular Requirements for Transportable Drills.
UL 60745–2–23	Hand-Held Motor-Operated Electric Tools—Safety—Part 2–23: Particular Requirements for Die Grinders and Small Rotary Tools.

IV. Preliminary Findings on the Application

SGS submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application files and pertinent documentation indicates that SGS can meet the requirements prescribed by 29 CFR 1910.7 for expanding the recognition to include the addition of these five test standards for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of SGS's application.

OSHA welcomes public comment as to whether SGS meets the requirements of 29 CFR 1910.7 for expansion of the recognition as a NRTL. OSHA additionally welcomes comments on the proposal to add five additional test standards to the NRTL Program's list of appropriate test standards. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the request is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Room N–3653, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. These materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2006–0040.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will make a recommendation to the Assistant Secretary for Occupational Safety and Health whether to grant SGS's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision,

the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

V. Authority and Signature

James S. Frederick, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to Section 29 U.S.C. 655(6)(d), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1905.11.

Signed at Washington, DC, on March 31, 2021.

James S. Frederick,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–07131 Filed 4–6–21; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–424 and 50–425; NRC–2021–0088]

Southern Nuclear Operating Company, Inc; Vogtle Electric Generating Plant, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of exemptions that would permit the Southern Nuclear Operating Company, Inc. (SNC, the licensee) to make changes to the Vogtle Electric Generating Plant (Vogtle), Unit 1 and 2, licensing basis. Specifically, the licensee is seeking exemptions that would allow the use of both a risk-informed approach to address safety issues discussed in Generic Safety Issue (GSI)–191 and to close Generic Letter (GL) 2004–02. The NRC staff is issuing a final Environmental Assessment (EA) and final Finding of No Significant Impact (FONSI) associated with the proposed exemptions.

DATES: The EA and FONSI referenced in this document are available on April 7, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0088 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0088. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *Attention:* The 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 1–800–379–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John G. Lamb, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3100, email: *John.Lamb@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of exemptions and license amendments of Renewed Facility Operating Licenses NPF–68 and NPF–81, issued to Southern Nuclear Operating Company (SNC, the licensee), for operation of the Vogtle Electric Generating Plant (Vogtle), Units 1 and 2, located in Burke County, Georgia. The license amendments and regulatory exemptions would allow SNC to incorporate the use of a risk-informed approach to address safety issues discussed in GSI–191 and to close GL 2004–02. Therefore, as required by section 51.21 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Criteria for and identification of licensing and regulatory actions requiring environmental assessments,'' the NRC performed an EA. Based on the results of the EA that follows, and in accordance with 10 CFR 51.31(a), the NRC has determined not to prepare an environmental impact statement for the proposed licensing action and is issuing a FONSI.

The NRC established GSI–191 to determine whether the transport and accumulation of debris from a loss-of-coolant accident (LOCA) in the pressurized-water reactor (PWR) containment structure would impede the operation of the emergency core cooling system (ECCS) or containment spray system (CSS). A LOCA within the containment structure is assumed to be caused by a break in the primary coolant loop piping. Water discharged from the pipe break and debris would collect on the containment structure floor and within the containment emergency sump. During this type of accident, the ECCS and CSS would initially draw cooling water from the refueling water storage tank (RWST). However, realigning the ECCS pumps to the containment emergency sump would provide long-term cooling of the reactor core. Therefore, successful long-term cooling depends on the ability of the containment emergency sump to provide adequate flow to the residual heat removal (RHR) recirculation pumps for extended periods of time.

One of the concerns addressed by the implementation of GSI–191 is that material, such as insulation installed on piping and components, within the containment structure could be dislodged by jets of high-pressure water and steam during the LOCA. Water, along with debris, would accumulate at the bottom of the containment structure and flow towards the emergency sumps. Insulation and other fibrous material could block the emergency sump screens and suction strainers, which in turn could prevent the containment emergency sump from providing adequate water flow to the residual heat removal pumps (for more information, see NUREG–0897, ''Containment Emergency Sump Performance,'' Revision 1).

By letter dated September 30, 2019, the NRC issued the ''Final Staff Evaluation for Vogtle Electric Generating Plant, Units 1 and 2, Systematic Risk-Informed Assessment of Debris Technical Report (EPID L–2017–TOP–0038).'' SNC proposes to use the ''Final Staff Evaluation for Vogtle Electric Generating Plant, Units 1 and 2, Systematic Risk-Informed Assessment of Debris Technical Report'' to demonstrate compliance with 10 CFR 50.46 through both plant-specific testing and a risk-informed approach (described in more detail in the following paragraphs). Since the use of a risk-

informed approach is not recognized in the regulations, SNC requested an exemption to 10 CFR 50.46(a)(1) for certain conditions associated with the treatment of debris. If approved, the proposed action would result in physical modifications to reduce the overall height of the RHR sump strainers at Vogtle, Units 1 and 2, by removing the two top disks from each stack of the RHR strainer assemblies. In addition, emergency operating procedures would be revised to inject additional RWST inventory for piping breaks that do not initiate containment sprays. These physical and procedural modifications will ensure that the RHR strainers are completely submerged for an increased number of postulated LOCA scenarios, which reduces the risk associated with post-accident debris effects.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would allow SNC to incorporate the use of a risk-informed approach to address safety issues discussed in GSI–191 and to close GL 2004–02. The proposed action is in response to the licensee's application dated August 17, 2020, as supplemented by letters dated December 17, 2020, and February 15, 2021.

Need for the Proposed Action

The proposed action is needed because, as the holder of Renewed Facility Operating License Nos. NPF–68 and NPF–81, SNC is expected to address the safety issues discussed in GSI–191 and to close GL 2004–02 with respect to Vogtle, Units 1 and 2. Consistent with SECY–12–0093, SNC chose an approach which requires, in part, that SNC request that the NRC amend the renewed facility operating licenses and grant certain regulatory exemption for each unit.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the environmental impacts of the proposed action.

Vogtle, Units 1 and 2, are located on an approximately 3,169-acre site on a Coastal Plain bluff on the southwest side of the Savannah River in Burke County, Georgia, approximately 15 miles east-northeast of Waynesboro, Georgia, and 26 miles southeast of Augusta, Georgia.

Vogtle consists of two four-loop Westinghouse PWR units. The reactor core of each unit heats water, which is pumped to four steam generators, where the heated water is converted to steam. The steam is then used to turn turbines, which are connected to electrical generators that produce electricity. A simplified drawing of a PWR can be viewed at *https://www.nrc.gov/reactors/pwrs.html.*

The reactor, steam generators, and other components are housed in a concrete and steel containment structure (building). The containment structure is a reinforced concrete cylinder with a concrete slab base and hemispherical dome. A welded steel liner is attached to the inside face of the concrete shell to ensure a high degree of leak tightness. In addition, the 4-foot (1.2-meter)–thick concrete walls of the containment structure serve as a radiation shield. Additional information on the plant structures and systems, as well as the environmental impact statement for license renewal, can be found in NUREG–1437, Supplement 34, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Supplement 34 Regarding Vogtle Electric Generating Plant, Units 1 and 2.''

Radiological and non-radiological impacts on the environment that may result from issuing the license amendments and granting the regulatory exemptions are summarized in the following sections.

Non-Radiological Impacts

The proposed action would reduce the overall height of the RHR sump strainers by removing the two top disks from each stack of the RHR strainer assemblies. No other changes would be made to structures or land use within the Vogtle, Units 1 and 2, site, and non-radiological liquid effluents or gaseous emissions would not change. In addition, the license amendments and regulatory exemptions would not result in any changes to the use of resources or create any new environmental impacts.

Therefore, there would be no non-radiological impacts to environmental resources or any irreversible and irretrievable commitments.

Since issuing the license amendment and granting the regulatory exemption would not result in environmental effects, there would be no non-radiological cumulative impact.

Radiological Impacts

Radioactive Gaseous and Liquid Effluents and Solid Waste

Vogtle, Units 1 and 2, use waste treatment systems to collect, process, recycle, and dispose of gaseous, liquid, and solid wastes that contain radioactive material in a safe and controlled manner within NRC and Environmental Protection Agency radiation safety standards.

The license amendments and regulatory exemptions would not require any physical change to the nuclear plant or reactor operations that would affect the types and quantities of radioactive material generated during plant operations; therefore, there would be no changes to the plant radioactive waste treatment systems. A detailed description of the Vogtle radioactive waste handling and disposal activities is presented in Chapter 2.1.4 of Supplement 34 to NUREG–1437.

Radioactive Gaseous Effluents

The objectives of the Vogtle gaseous waste management system (GWMS) are to process and control the release of radioactive gaseous effluents into the environment to be within the requirements of 10 CFR 20.1301, ''Dose limits for individual members of the public,'' and to be consistent with the as low as is reasonably achievable (ALARA) dose objectives set forth in appendix I to 10 CFR part 50. The GWMS is designed so that radiation exposure to plant workers is within the dose limits in 10 CFR 20.1201, ''Occupational dose limits for adults.''

The license amendments and regulatory exemptions would not require any physical change to the nuclear plant or reactor operations that would affect the release of radioactive gaseous effluents into the environment; therefore, there would be no changes to the GWMS. The existing equipment and plant procedures that control radioactive releases to the environment would continue to be used to maintain radioactive gaseous releases within the dose limits in 10 CFR 20.1301 and the ALARA dose objectives in appendix I to 10 CFR part 50.

Radioactive Liquid Effluents

The function of the Vogtle liquid waste processing system (LWPS) is to collect and process radioactive liquid wastes to reduce radioactivity and chemical concentrations to levels acceptable for discharge to the environment or to recycle the liquids for use in plant systems. The principal objectives of the LWPS are to collect liquid wastes that may contain radioactive material and to maintain sufficient processing capability so that liquid waste may be discharged to the environment below the regulatory limits in 10 CFR 20.1301 and consistent with the ALARA dose objectives in appendix I to 10 CFR part 50. The waste is routed through a monitor that measures the radioactivity and can automatically

terminate the release in the event radioactivity exceeds predetermined levels. The liquid waste is discharged into the main cooling reservoir. The entire main cooling reservoir is within the Vogtle site boundary and the public is prohibited from access to the area.

The license amendments and regulatory exemptions would not require any physical change to the nuclear plant or reactor operations that would affect the release of radioactive liquid effluents into the environment; therefore, there would be no changes to the LWPS. The existing equipment and plant procedures that control radioactive releases to the environment would continue to be used to maintain radioactive liquid releases within the dose limits in 10 CFR 20.1301 and the ALARA dose objectives in appendix I to 10 CFR part 50.

Radioactive Solid Wastes

The function of the Vogtle solid waste processing system (SWPS) is to process, package, and store the solid radioactive wastes generated by nuclear plant operations until they are shipped off site to a vendor for further processing or for permanent disposal at a licensed burial facility, or both. The storage areas have restricted access and shielding to reduce radiation rates to plant workers. The principal objectives of the SWPS are to package and transport the waste in compliance with NRC regulations in 10 CFR part 61, ''Licensing Requirements for Land Disposal of Radioactive Waste,'' and 10 CFR part 71, ''Packaging and Transportation of Radioactive Material,'' and the U.S. Department of Transportation regulations in 49 CFR parts 170 through 179; and to maintain the dose limits in 10 CFR 20.1201, 10 CFR 20.1301, and appendix I to 10 CFR part 50.

The existing equipment and plant procedures that control radioactive solid waste handling would continue to be used to maintain exposures within the dose limits in 10 CFR 20.1201, 10 CFR 20.1301, and 10 CFR part 50 appendix I. Thus, there will be no changes to the SWPS and issuing the license amendment and granting the regulatory exemption will not result in any physical changes to the nuclear plant or reactor operations that would affect the release of radioactive solid wastes into the environment.

Occupational Radiation Doses

The license amendments and regulatory exemptions would not require any physical change to the nuclear plant (except for reducing the overall height of the RHR sump strainers) or changes to reactor operations; therefore, there would be no change to any in-plant radiation sources. In addition, no new operator actions would be implemented that could affect occupational radiation exposure. The licensee's radiation protection program monitors radiation levels throughout the nuclear plant to establish appropriate work controls, training, temporary shielding, and protective equipment requirements so that worker doses remain within the dose limits in 10 CFR part 20, subpart C, ''Occupational Dose Limits.'' The license amendments and regulatory exemptions would not change radiation levels within the nuclear plant and, therefore, there would be no increased radiological impact to the workers.

Offsite Radiation Dose

The primary sources of offsite doses to members of the public from the Vogtle are radioactive gaseous and liquid effluents. As discussed previously, there would be no change to the operation of Vogtle radioactive gaseous and liquid waste management systems or their ability to perform their intended functions. Also, there would be no change to the Vogtle radiation monitoring system and procedures used to control the release of radioactive effluents in accordance with radiation protection standards in 10 CFR 20.1301, 40 CFR 190, ''Environmental Radiation Protection Standards for Nuclear Power Operations,'' and the ALARA dose objectives in appendix I to 10 CFR part 50.

Based on this information, the offsite radiation doses to members of the public would not change and would continue to be within regulatory limits. Therefore, the license amendments and regulatory exemptions would not change offsite dose levels and, consequently, there would be no significant health effects from the proposed action.

Design-Basis Accidents

Design-basis accidents at Vogtle, Units 1 and 2, are evaluated by both the licensee and the NRC to ensure that the units would continue to withstand the spectrum of postulated accidents without undue hazard to the public health and safety and to ensure the protection of the environment.

Separate from the environmental review, the NRC is evaluating the licensee's technical and safety analyses provided in support of the proposed action. The results of the safety review and conclusion will be documented in a publicly available safety evaluation. The safety evaluation must conclude that the proposed action will (1) provide reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) provide reasonable assurance that such activities will be conducted in compliance with the Commission's regulations, and (3) not be inimical to the common defense and security or to the health and safety of the public. The NRC would not take the proposed action absent such a safety conclusion.

Radiological Cumulative Impacts

The radiological dose limits for protection of the public and plant workers have been developed by the NRC and the Environmental Protection Agency to address the cumulative impact of acute and long-term exposure to radiation and radioactive material. These dose limits are codified in 10 CFR part 20, ''Standards for Protection Against Radiation,'' and 40 CFR part 190.

Cumulative radiation doses are required to be within the limits set forth in the regulations cited in the previous paragraph. The license amendments and exemptions would not require physical changes to the plant (except for reducing the overall height of the RHR sump strainers) or changes to plant activities; in-plant radiation sources would not change and offsite radiation dose to members of the public would not change. Therefore, there would be no significant cumulative radiological impact from the proposed action.

Radiological Impacts Summary

Based on these evaluations, the license amendments and exemptions would not result in any significant radiological impacts. Therefore, the safety evaluation must conclude that the proposed action will (1) provide reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) provide reasonable assurance that such activities will be conducted in compliance with the Commission's regulations, and (3) not be inimical to the common defense and security or to the health and safety of the public. The NRC would not take the proposed action absent such a safety conclusion.

Environmental Impacts of the Alternatives to the Proposed Action

As discussed earlier, licensees have options for responding to GL 2004–02 and for demonstrating compliance with 10 CFR 50.46. Consistent with these options, as an alternative to the proposed action, the licensee could choose to remove and replace insulation

within the reactor containment building. This would require the physical removal and disposal of significant amounts of insulation from a radiation area within the reactor containment building and the installation of new insulation less likely to impact sump performance.

Removal of the existing insulation from the containment building would generate radiologically contaminated waste. SNC estimated that between 4,000 and 5,000 cubic feet of fiberglass insulation per unit would have to be removed from Vogtle, Units 1 and 2, containment. This estimate is based on calculations performed for South Texas Project (STP) and the similarities between Vogtle and STP. The removed insulation would require special handling and packaging so that it could be safely transported from the site. The licensee would likely use existing facilities to process and store this material until it could be transported to a low-level radioactive or hazardous waste disposal site. Energy (fuel) would be expended to transport the insulation and land would be expended at the disposal site.

The removal of the old insulation and installation of new insulation would expose workers to radiation. In its application, SNC estimated generically that the expected total dose for replacing insulation in Vogtle, Units 1 and 2, is about 200 rem (100 rem per unit), based on the calculations performed for STP. The NRC reviewed NUREG–0713, Volume 40, ''Occupational Radiation Exposure at Commercial Nuclear Power Reactors and Other Facilities 2018: Fifty-First Annual Report,'' and determined that SNC's average baseline collective radiation exposure is approximately 62 person-rem. This additional 200 person-rem collective exposure would be shared across the entire work force involved with removing and reinstalling insulation. In SECY–12–0093, the NRC attempted to develop a total occupational dose estimate for the work involved in insulation removal and replacement associated with GSI–191. Due to uncertainties in the scope of work required to remove and replace insulation at a specific nuclear plant and other site-specific factors such as source term and hazardous materials, the NRC was unable to estimate the total occupational dose associated with this work. However, dose estimates were provided by the Nuclear Energy Institute (NEI) in a letter to the NRC dated March 30, 2012, based on information collected on occupational radiation exposures that have been, or could be, incurred during insulation removal and replacement. In the letter, NEI noted similar difficulties in estimating the potential amount of radiation exposure, but provided a ''per unit'' estimate of between 80 and 525 person-rem. Given uncertainties in the scope of work and other nuclear plant-specific factors such as source term and hazardous materials, there is no basis to conclude that the NEI estimates were unreasonable. Therefore, since SNC's estimate of radiation exposure for insulation removal and replacement is within the NEI estimated range, SNC's estimate of an increase of 200 person-rem over baseline exposure is reasonable.

As stated in the ''Occupational Radiation Doses'' section of this document, SNC's radiation protection program monitors radiation levels throughout the nuclear plant to establish appropriate work controls, training, temporary shielding, and protective equipment requirements so that worker doses are expected to remain within the dose limits in 10 CFR 20.1201.

In addition, as stated in the ''Offsite Radiation Dose'' section of this document, SNC also has a radiation monitoring system and procedures in place to control the release of radioactive effluents in accordance with radiation protection standards in 10 CFR 20.1301, 40 CFR part 190, and the ALARA dose objectives in appendix I to 10 CFR part 50. Therefore, radiation exposure to members of the public would be maintained within the NRC dose criteria in 10 CFR 20.1301, 40 CFR part 190, and the ALARA dose objectives of appendix I to 10 CFR part 50.

Based on this information, impacts to members of the public from removing and replacing insulation within the reactor containment building would not be significant. However, impacts to plant workers and the environment from implementing this alternative would be greater than implementing the proposed action.

Alternative Use of Resources

The proposed action would not involve the use of any different resources (*e.g.,* water, air, land, nuclear fuel) not previously considered in NUREG–1437, Supplement 34.

Agencies and Persons Consulted

In accordance with its stated policy, on March 11, 2021, the NRC staff consulted with the State of Georgia officials, Ms. Shelby Naar, Mr. Sean Hayes, Mr. David Matos, and Mr. Richard Dunn, regarding the environmental impact of the proposed action. The State of Georgia officials had no comments on the EA and FONSI.

III. Finding of No Significant Impact

The licensee requested to amend Facility Operating License Nos. NPF–68 and NPF–81 to grant exemptions for Vogtle, Units 1 and 2, from certain requirements of 10 CFR 50.46(a)(1). This proposed action would not significantly affect plant safety, would not have a significant adverse effect on the probability of an accident occurring, and would not have any significant radiological or non-radiological impacts. It would also not result in any changes to radioactive effluents or emissions, exposures to nuclear plant workers and members of the public, or any changes to radiological and non-radiological impacts to the environment.

Consistent with 10 CFR 51.21, the NRC conducted an environmental review of the proposed action, and this FONSI incorporates Section II of the EA by reference in this notice. Therefore, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined there is no need to prepare an environmental impact statement for the proposed action.

As required by 10 CFR 51.32(a)(5), the related environmental document is the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Vogtle Electric Generating Plant, Units 1 and 2, Final Report,'' NUREG–1437, Supplement 34, dated November 2008, which provides the latest environmental review of current operations and description of environmental conditions at Vogtle.

This FONSI and other related environmental documents are accessible online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resource@nrc.gov.*

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	Adams accession No.
NUREG–0897, Containment Emergency Sump Performance: Technical Findings Related to Unresolved Safety Issue A–43, Revision 1, October 1985.	ML112440046
NRC Generic Letter 2004–02, Potential Impact of Debris Blockage on Emergency Recirculation During Design Basis Accidents at Pressurized-Water Reactors, September 13, 2004.	ML042360586
NEI letter to NRC, Nuclear Energy Institute, GSI–191 Dose Estimates, March 30, 2012	ML12095A319
Commission SECY–12–0093, Closure Options for Generic Safety Issue–191, Assessment of Debris Accumulation on Pressurized-Water Reactor Sump Performance, July 9, 2012.	ML121320270 *
Commission SRM–SECY–12–0093, Staff Requirements—SECY–12–0093—Closure Options for Generic Safety Issue–191, Assessment of Debris Accumulation on Pressurized-Water Reactor Sump Performance, December 14, 2012.	ML12349A378
NUREG–1437, Supplement 34, Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Supplement 34 Regarding Vogtle Electric Generating Plant, Units 1 and 2: Final Report, December 2008.	ML083380325
STPNOC Letter, ''Revised STP Pilot Submittal and Requests for Exemptions and License Amendment for a Risk-Informed Approach to Resolving Generic Safety Issue (GSI)–191, June 19, 2013.	ML13175A211
NUREG–0713, Volume 40, Occupational Radiation Exposure at Commercial Nuclear Power Reactors and Other Facilities 2012: Fifty-First Annual Report, March 2018.	ML20087J424
NRC Letter, ''Final Staff Evaluation for Vogtle Electric Generating Plant, Units 1 and 2, Systematic Risk-Informed Assessment of Debris Technical Report,'' September 30, 2019.	ML19120A469
SNC Letter, ''Exemption Request and License Amendment Request for a Risk-Informed Resolution to GSI–191,'' August 17, 2020.	ML20230A346
SNC Letter, ''Response to Request for Additional Information Regarding Risk-Informed Resolution to GSI–191,'' December 17, 2020.	ML20352A228
SNC Letter, ''Vogtle Electric Generating Plant—Units 1 and 2, Supplement to Request for Exemption to Support Risk-Informed Resolution to Generic Letter 2004–02,'' February 15, 2021.	ML21046A094

* (package).

Dated: April 2, 2021.

For the Nuclear Regulatory Commission.

Craig G. Erlanger,

Director, Division of Operator Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–07172 Filed 4–6–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

685th Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232(b)), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on May 5–7, 2021. As part of the coordinated government response to combat the COVID–19 public health emergency, the Committee will conduct virtual meetings. The public will be able to participate in any open sessions via 1–866–822–3032, pass code 8272423#. A more detailed agenda may be found at the ACRS public website at *https://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/index.html.*

Wednesday, May 5, 2021

2:00 p.m.–2:35 p.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

2:35 p.m.–5:00 p.m.: Interim Letter Report on title 10 of the Code of Federal Regulations (10 CFR) Part 53 Rulemaking Language for Licensing of Advanced Reactors (Open)—The Committee will have presentations and discussion with representatives from the NRC staff regarding the subject topic.

5:00 p.m.–6:00 p.m.: Committee Deliberation on 10 CFR part 53 (Open)—The Committee will have discussion regarding the subject topic.

Thursday, May 6, 2021

9:30 a.m.–11:00 a.m.: White Paper on Fusion (Open)—The Committee will have presentations and discussion with representatives from the NRC staff and other stakeholders regarding the subject topic.

11:15 a.m.–1:30 p.m.: Uprated NuScale Standard Design Approval Application Update (Open/Closed)—The Committee will have presentations and discussion with representatives from NuScale regarding the subject topic. [NOTE: Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

2:30 p.m.–6:00 p.m.: Preparation of ACRS Reports and Bylaws Review (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and Bylaws review. [NOTE: Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

Friday, May 7, 2021

9:30 a.m.–12:00 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations/Preparation of Reports (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings, and/or proceed to preparation of reports as determined by the Chairman. [NOTE: Pursuant to 5 U.S.C. 552b(c)(2) and (6), a portion of this meeting may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

[NOTE: Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

12:00 p.m.–1:00 p.m.: Bylaws Review/Preparation of Reports (Open/Closed)—The Committee will continue its Bylaws review and discussion of proposed ACRS reports.

[NOTE: Pursuant to 5 U.S.C. 552b(c)(2) and (6), a portion of this meeting may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

[NOTE: Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

2:00 p.m.–6:00 p.m.: Bylaws Review/ Preparation of Reports (Open/Closed)—The Committee will continue its Bylaws review and discussion of proposed ACRS reports.

[NOTE: Pursuant to 5 U.S.C. 552b(c)(2) and (6), a portion of this meeting may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

[NOTE: Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on June 13, 2019 (84 FR 27662). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff and the Designated Federal Officer (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

An electronic copy of each presentation should be emailed to the Cognizant ACRS Staff at least one day before meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's Agencywide Documents Access and Management System (ADAMS), which is accessible from the NRC website at *https://www.nrc.gov/reading-rm/adams.html* or *https://www.nrc.gov/reading-rm/doc-collections/#ACRS/.*

Dated: April 2, 2021.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2021–07177 Filed 4–6–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323; NRC–2021–0078].

Pacific Gas and Electric Company; Diablo Canyon Nuclear Power Plant, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a one-time exemption in response to a February 4, 2021, request from Pacific Gas and Electric Company (the licensee) for an exemption from the operator requalification program requirements at Diablo Canyon Nuclear Power Plant, Units 1 and 2 (Diablo Canyon), to minimize potential operator distractions during plant startup. The exemption affords a one-month extension of the 2-year program requalification and 1-year operator exam requirements, until June 30, 2021. The NRC staff made the required findings that the exemption is authorized by law, will not endanger life or property, and is otherwise in the public interest.

DATES: The exemption was issued on April 1, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0078 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0078. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *Attention:* The 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 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Samson Lee, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3168, email: *Samson.Lee@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC approved the one-time exemption from certain requirements of Part 55 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Operators' Licenses,'' for Diablo Canyon. This action was in response to the Pacific Gas and Electric Company's (the licensee's) application dated February 4, 2021, which requested a one-time exemption for Diablo Canyon from the requirements of 10 CFR 55.59, ''Requalification,'' program to minimize potential operator distractions during plant startup. The exemption affords a one-month extension of the 2-year program requalification and 1-year operator exam requirements, until June 30, 2021. The NRC staff made the findings required in 10 CFR 55.11, ''Specific exemptions,'' that the exemption is authorized by law, will not endanger life or property, and is otherwise in the public interest.

II. Availability of Documents

The table in this notice provides the facility name, docket number, document description, and ADAMS accession number for the exemption issued. Additional details on the exemption issued, including the exemption request submitted by the licensee and the NRC's decision, are provided in the exemption approval listed in the table in this notice. For additional directions on accessing information in ADAMS, see the **ADDRESSES** section of this document.

DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2

[Docket Nos. 50–275 and 50–323]

Document description	ADAMS accession No.
Diablo Canyon Power Plant, Units 1 and 2, Request for One-Time Exemption from Select 10 CFR 55.59 Requirements	ML21049A050
Diablo Canyon Nuclear Power Plant, Units 1 and 2—Exemption from Select Requirements of 10 CFR Part 55, ''Operators' Licenses'' (EPID L–2021–LLE–0007).	ML21067A058

Dated: April 2, 2021.

For the Nuclear Regulatory Commission.

Samson S. Lee,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–07130 Filed 4–6–21; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Migration to a New Financial System

AGENCY: Office of Personnel Management.

ACTION: Notice of migration to a new financial system.

SUMMARY: OPM's Office of Chief Financial Officer (OCFO), in coordination with the Department of Transportation (DOT) and its Enterprise Services Center (ESC), is leading an initiative that will result in the migration to a new financial management platform. As part, OPM will transition to processing invoice payments through a secure, internet-based portal known as the Delphi eInvoicing system. This represents an administrative change to the current way that OPM's vendors submit invoices and receive payment. This notice is not a solicitation for public comment, nor does it contain any rulemaking. Its intent is to provide OPM vendors with advance notice of the forthcoming migration so that they may prepare accordingly.

DATES: The migration identified in this notice is expected to be complete on or about May 12, 2021. On or after this date, all OPM vendors will be required to submit invoices within the Delphi eInvoicing system to receive payment. Non-conformant invoices submitted outside of the Delphi eInvoicing system may be rejected. OPM vendors seeking additional information should reach out to the point(s) of contact listed below.

FOR FURTHER INFORMATION CONTACT: Mark Brody, Lead Accountant, OPM, OCFO, 202–606–0707.

Authority: OMB Memorandum M–15–19: Improving Government Efficiency and Saving Taxpayer Dollars Through Electronic Invoicing.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2021–06878 Filed 4–6–21; 8:45 am]

BILLING CODE 6325–23–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91457; File No. SR–MEMX–2021–05]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Current Pilot Program Related to MEMX Rule 11.15, Clearly Erroneous Executions

April 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 23, 2021, MEMX LLC (''MEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to extend the current pilot program related to MEMX Rule 11.15, ''Clearly Erroneous Executions,'' to the close of business on October 20, 2021. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions to the close of business on October 20, 2021. Portions of Rule 11.15, explained in further detail below, are currently operating as a pilot program which is set to expire on April 20, 2021.[5]

On May 4, 2020, the Commission approved MEMX's Form 1 Application to register as a national securities exchange with rules including, on a pilot basis, MEMX Rule 11.15.[6] Rule 11.15, among other things (i) provides for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduces the ability of the Exchange to deviate from objective standards set forth in the rule. The rule further provides that: (i) a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* MEMX Rule 11.15.

[6] *See* Securities Exchange Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020).

all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer of the Exchange or senior level employee designee, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security, and before such a trading halt has officially ended according to the primary listing market.[7]

Previously, the clearly erroneous pilot programs adopted by the national securities exchanges and the current Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''LULD Plan'') were a single pilot program. On April 17, 2019, the Commission approved the Eighteenth Amendment to the LULD Plan, allowing the LULD Plan to operate on a permanent, rather than pilot, basis.[8] Accordingly, national securities exchanges filed with the Commission amendments to exchange rules to untie the pilot program's effectiveness from that of the LULD Plan in order to provide such exchanges additional time to consider further amendments, if any, to the clearly erroneous execution rules in light of the proposed Eighteenth Amendment to the LULD Plan.[9]

Subsequently, national securities exchanges filed with the Commission amendments to exchange rules to extend the pilot's effectiveness to the close of business on April 20, 2021.[10] Similarly, the Exchange amended MEMX Rule 11.15 to extend the pilot's effectiveness to the close of business on April 20, 2021.[11]

The Exchange now proposes to amend MEMX Rule 11.15 to extend the pilot's effectiveness to the close of business on October 20, 2021. MEMX understands that certain other national securities exchanges and the Financial Industry Regulatory Authority (''FINRA'') also intend to file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to MEMX Rule 11.15.

The Exchange does not propose any additional changes to MEMX Rule 11.15. By proposing to extend the pilot, the Exchange will avoid any discrepancy between its clearly erroneous pilot program and the pilot programs of other exchanges and FINRA, as the language of such rules are identical to MEMX Rule 11.15 and, as noted above, other exchanges and FINRA also intend to file proposals to extend their respective clearly erroneous execution pilot programs. The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a limited six month pilot basis. As the LULD Plan was approved by the Commission to operate on a permanent, rather than pilot, basis the Exchange intends to assess whether additional changes should also be made to the operation of the clearly erroneous execution rules. Extending the effectiveness of MEMX Rule 11.15 for an additional six months should provide the Exchange and other national securities exchanges additional time to consider future amendments, if any, to the clearly erroneous execution rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that extending the clearly erroneous execution pilot under MEMX Rule 11.15 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed extension would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other national securities exchanges consider and develop a permanent proposal for clearly erroneous executions reviews.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange understands that FINRA and certain other national securities exchanges will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of the filing. However, Rule

[7] *See* MEMX Rule 11.15.

[8] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (File No. 4–631).

[9] *See, e.g.,* Securities Exchange Act Release No. 85542 (April 8, 2019), 84 FR 15009 (April 12, 2019) (SR–CboeBYX–2019–003).

[10] *See, e.g.,* Securities Exchange Act Release No. 90231 (October 20, 2020), 85 FR 67789 (October 26, 2020) (SR–CboeBZX–2020–077).

[11] *See* Securities Exchange Act Release No. 90022 (September 28, 2020), 85 FR 62340 (October 2, 2020) (SR–MEMX–2020–09).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

19b–4(f)(6)(iii) [17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2021–05 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–MEMX–2021–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2021–05 and should be submitted on or before April 28, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07118 Filed 4–6–21; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91449; File No. SR–NYSE–2021–21]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.37

April 1, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 25, 2021, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.37 to specify when the Exchange may adjust its calculation of the PBBO. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.37 to specify when the Exchange may adjust its calculation of the PBBO.[4]

Generally, the Exchange updates both the PBBO and NBBO based on quote updates received from data feeds from Away Markets, which are disclosed in Rule 7.37(e). In 2015, the Exchange described in a rule filing that when it

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The term ''PBBO'' is defined in Rule 1.1 to mean the Best Protected Bid and the Best Protected Offer, which in turn mean the highest Protected Bid and the lowest Protected Offer, which refer to quotations in an NMS stock that is (i) displayed by an Automated Trading Center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an Automated Quotation that is the best bid or best offer of a national securities exchange or the best bid or best offer of a national securities association. The term NBBO is defined to mean the national best bid and offer. The Exchange notes that the NBBO may differ from the PBBO because the NBBO includes Manual Quotations, which are defined as any quotation other than an automated quotation. 17 CFR 242.600(b)(37).

routes interest to a protected quotation, the Exchange adjusts the PBBO.[5] The Exchange proposes to amend its rules to include that description in Rule 7.37 and provide additional specificity of when it may adjust its calculation of the PBBO.

As proposed, new paragraph (e)(1) of Rule 7.37 would provide:

> The Exchange may adjust its calculation of the PBBO based on information about orders it sends to Away Markets with protected quotations, execution reports received from those Away Markets, and certain orders received by the Exchange.

This proposed rule text is consistent with the Exchange's disclosure in the Data Feed Filing and adds specificity that the Exchange may adjust its calculation of the PBBO based on execution reports received from Away Markets and certain orders received by the Exchange.[6]

Proposed Rule 7.37(e)(1) is based on MEMX LLC (''MEMX'') Rule 13.4(b) with two non-substantive differences.[7] First, the Exchange proposes to use the term ''PBBO,'' which is the term used in the Exchange's rules for the best-priced protected quotations, instead of ''NBBO.'' Second, the Exchange proposes to refer to ''Away Markets,'' which is a defined term in Rule 1.1, instead of ''other venues.''

MEMX has not disclosed circumstances when ''certain orders received by the Exchange'' would result in an adjustment to its calculation of the PBBO, but the Exchange believes that when MEMX receives an ISO with a Day time in force (''Day ISO''), it adjusts its calculation of the PBBO. The Exchange proposes that it would also adjust its calculation of the PBBO based on receipt of a Day ISO, which is consistent with how Nasdaq Stock Market LLC (''Nasdaq'')[8] and Cboe BZX Exchange, Inc. (''BZX'')[9] function.

Specifically, the Exchange proposes that it would adjust its calculation of the PBBO upon receipt of a Day ISO Order that the Exchange displays. As described in Rule 7.37(f)(3)(C), a Day ISO is eligible for the exception to locking or crossing a protected quotation because the member organization simultaneously routes an ISO to execute against the full size of any locked or crossed protection quotations, *i.e.,* the member organization routes ISOs to trade with contra-side protected quotations on Away Markets that are priced equal to or better than the arriving Day ISO on the Exchange. Because receipt of a Day ISO informs the Exchange that the member organization has routed ISOs to trade with Away Market contra-side protected quotations priced equal to or better than the Day ISO, upon receipt and displaying of a Day ISO, the Exchange proposes to adjust its calculation of the PBBO to exclude any contra-side protected quotations that are priced equal to or better than the Day ISO.

- For example, if the best protected bid is 10.00, Exchange A is displaying a protected offer at 10.05, and Exchange B is displaying a protected offer at 10.09, the Exchange's calculation of the PBBO would be 10.00 × 10.05. If the Exchange receives a Day ISO for 100 shares to buy priced at 10.05 that is displayed on the Exchange at 10.05, the Exchange would adjust its calculation of the PBBO to be 10.05 × 10.09 and would use this updated PBBO for execution, routing, and re-pricing determinations.

If a Day ISO is displayed on the Exchange at a price less aggressive than its limit price (*e.g.,* a Day ISO ALO that, if displayed at its limit price, would lock displayed interest on the Exchange), the Day ISO still informs the Exchange that the member organization has routed ISOs to trade with contra-side protected quotations on Away Markets that are priced equal to or better than the *limit price* of arriving Day ISO on the Exchange. The Exchange would therefore use the limit price of the Day ISO ALO to determine how to adjust its calculation of the contra-side Away Market PBBO, provided that contra-side displayed interest on the Exchange equal to the limit price of the Day ISO ALO would not be considered cleared. The price at which the arriving Day ISO ALO would be displayed would be the price that informs the Exchange's calculation of the same-side PBBO.

For example, when the best protected bid is 10.00 and Exchange A is displaying a protected offer at 10.05 and the Exchange's best displayed offer is 10.07, the Exchange's calculation of the PBBO would be 10.00 × 10.05, then:

- If the Exchange receives ALO ''1'' to buy at 10.06, it would be displayed at 10.04 and be assigned a working price of 10.05, which is the PBO (displayed on Exchange A),[10] and the Exchange would adjust the PBBO to be 10.04 × 10.05.
- If next, the Exchange receives Day ISO ALO ''2'' to buy at 10.07, the Exchange would be permitted to display that order at a price that crosses Exchange A's PBO because it is a Day ISO. However, because it locks the Exchange's best displayed offer, due to its ALO modifier, the Exchange would display Day ISO ALO ''2'' at 10.06 and it would have a working price of 10.06.[11] In this scenario, the Exchange proposes to adjust its calculation of the PBBO to be 10.06 × 10.07 and use this updated PBBO for execution, routing, and re-pricing determinations, including repricing the ALO ''1'' to buy to both work and display at its limit price of 10.06.

The Exchange believes that adjusting the PBBO in this manner is consistent with Regulation NMS because the member organization that submitted the

[5] *See* Securities Exchange Act Release No. 74410 (March 2, 2015), 80 FR 12240 (March 6, 2015) (SR–NYSE–2015–09) (Notice of filing and immediate effectiveness of proposed rule change) (''Data Feed Filing'').

[6] The Exchange does not adjust its calculation of the NBBO based on information about orders sent to Away Markets, execution reports from Away Markets, or certain orders received by the Exchange.

[7] MEMX Rule 13.4(b) provides: ''The Exchange may adjust its calculation of the NBBO based on information about orders sent to other venues with protected quotations, execution reports received from those venues, and certain orders received by the Exchange.''

[8] *See* Nasdaq Rule 4703(j) (''Upon receipt of an ISO, the System will consider the stated price of the ISO to be available for other Orders to be entered at that price, unless the ISO is not itself accepted at that price level (for example, a Post-Only Order that has its price adjusted to avoid executing against an Order on the Nasdaq Book) or the ISO is not Displayed.'') and Securities Exchange Act Release No. 74558 (March 20, 2015) 80 FR 16050, 16068 (March 26, 2015) (SR–Nasdaq–2015–024) (Notice).

[9] *See* Securities Exchange Act Release No. 74074 (January 15, 2015), 80 FR 3679, 3680 (January 23, 2015) (SR–BATS–2015–04) (Notice of filing and immediate effectiveness of proposed rule change to clarify the use of certain data feeds) (''The Exchange's [matching engine] will update the NBBO upon receipt of a Day ISO. When a Day ISO is posted on the BATS Book, the [matching engine] uses the receipt of a Day ISO as evidence that the protected quotes have been cleared, and the ME does not check away markets for equal or better-priced protected quotes. . . . . In determining whether to route an order and to which venue(s) it should be routed, the [routing engine] makes its own calculation of the NBBO. . . . The [routing engine] does not utilize Day ISO Feedback in constructing the NBBO; however, because all orders initially flow through the [matching engine], to the extent Day ISO Feedback has updated the [matching engine's] calculation of the NBBO, all orders processed by the [routing engine] do take Day ISO Feedback into account.'') (''BZX Filing'').

[10] *See* Rule 7.31(e)(2)(B)(i).

[11] *See* Rule 7.31(e)(3)(D)(ii). Currently, the Exchange would display such Day ISO ALO ''2'' at 10.06 and would adjust its calculation of the same-side PBBO and reprice same-side resting orders to the Day ISO price, but would not adjust its calculation of the contra-side PBBO for purposes of routing and execution determinations of new orders.

Day ISO ALO to buy priced at 10.07 has represented that it has sent ISOs to trade with protected offers on other exchanges priced at 10.07 or lower. The only reason that such order would not be displayed at 10.07 on the Exchange is because it has an ALO modifier and cannot trade with the Exchange's displayed offer of 10.07. However, there is no restriction on that Day ISO ALO being displayed at 10.06, which crosses the Away Market PBO of 10.05. The Exchange believes in this circumstance, it is consistent with Regulation NMS for the Exchange to consider that any Away Market protected offers priced 10.07 or below have been cleared and therefore adjust its calculation of the contra-side Away Market PBBO for purposes of execution, routing, and repricing determinations based on the limit price of the Day ISO ALO.

The Exchange believes that the proposed amendments to Rule 7.37(e) would promote clarity and transparency in the Exchange's rules regarding circumstances when the Exchange may adjust its calculation of the PBBO. The Exchange does not believe this proposed rule change is novel. Rather, the Exchange believes that other equity exchanges that accept Day ISOs similarly adjust their calculation of the best protected bid and best protected offer for purposes of making execution, routing, and repricing determinations based on the receipt of Day ISOs, as described above. The Exchange anticipates that it will implement the technology change to how it calculates the PBBO in May 2021.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[13] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is designed to promote clarity and transparency in Exchange rules of when the Exchange may adjust its calculation of the PBBO. The Exchange believes that adjusting its calculation of the PBBO based on receipt of a Day ISO is consistent with Regulation NMS because the member organization that entered such Day ISO has also sent ISOs to Away Markets to trade with contra-side protected quotations priced equal to or better than the Day ISO. For the same reasons that displaying a Day ISO at a price that locks or crosses the PBBO is consistent with Regulation NMS, the Exchange believes that adjusting its calculation of the PBBO based on receipt and display of a Day ISO for purposes of making execution, routing, and repricing determinations for other orders is also consistent with Regulation NMS. The Exchange further notes that the proposed rule text is not novel and is based on MEMX Rule 13.4(b) and is consistent with Nasdaq rules and the BZX Filing.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[14] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes are designed to promote transparency and clarity in Exchange rules regarding when the Exchange may adjust its calculation of the PBBO. The Exchange believes that the proposed rule change would promote competition because the Exchange proposes to adjust its calculation of the PBBO under similar circumstances that other equity exchanges adjust their calculation of the PBBO, including MEMX, Nasdaq, and BZX.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[17] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2021–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2021–21. 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

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(8).

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 15 U.S.C. 78s(b)(2)(B).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2021–21, and should be submitted on or before April 28, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07114 Filed 4–6–21; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91450; File No. SR–ICC–2021–006]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Proposed Rule Change Relating to the ICC Clearing Rules and ICC Exercise Procedures

April 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) and Rule 19b–4, 17 CFR 240.19b–4, notice is hereby given that on March 25, 2021, 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 by ICC. The Commission is publishing this notice to solicit comments on 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 revise the ICC Clearing Rules (the ''Rules'') and the ICC Exercise Procedures in connection with the clearing of credit default index Swaptions.[1]

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, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. 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

ICC proposes revising the ICC Rules and the ICC Exercise Procedures related to the clearing of credit default index Swaptions (''Index Swaptions''). 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. In the case of Index Swaptions cleared by ICC, the underlying index credit default swap is limited to certain CDX and iTraxx 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. ICC proposes minor revisions to support the clearing of Index Swaptions, including updates related to iTraxx Index Swaptions, an enhancement to the exercise and assignment process, and other clarifications. ICC proposes to make the changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

[1] Capitalized terms used but not defined herein have the meanings specified in the Rules.

I. Rule Amendments

The proposed amendments consist of minor revisions to Rule 26R–319, which addresses procedures for settlement of an exercised Index Swaption. Additional settlements may be required under Rule 26R–319(b) if one or more Credit Events has occurred with respect to the underlying index at or prior to the expiration date of the Index Swaption. Regarding the determination of Index Swaption settlement amounts, Rule 26R–319(b)(ii) currently contemplates the inclusion of an additional accrual-related component (''Additional Accrual'') which is specified as zero in accordance with ICC Circular 2020/070.[2] The circular describes how ICC determines settlement amounts for cleared Index Swaptions in light of industry discussions and refers market participants to a detailed presentation on ICC's website.[3] Amended Rule 26R–319(b)(ii) would omit the description of the Additional Accrual. The circular and presentation on the determination of Index Swaption settlement amounts would remain on ICC's website.

Regarding iTraxx Index Swaptions, ICC proposes to amend Rule 26R–319(c), which applies in the case of a relevant M(M)R Restructuring Credit Event. ICC proposes to omit paragraph (i), related to the delivery of MP Notices by Swaption Buyer and Swaption Sellers. ICC does not proposes any changes to paragraph (ii), which details how an Underlying New Trade comes into effect. An Underlying New Trade remains defined in Rule 26R–102 as a new single name CDS trade that would arise upon exercise of an Index Swaption where a relevant Restructuring Credit Event, if applicable, has occurred with respect to a reference entity in the relevant index. ICC proposes to amend paragraph (iii) and remove paragraph (iv) which currently discuss the treatment of the Underlying New Trade in respect of the Event Determination Date. Instead, amended paragraph (iii) would discuss the treatment of the Underlying New Trade depending on whether the expiration date occurred prior to, or on or following, the commencement of the CEN Triggering Period (as defined in the

[2] ICC Circular 2020/070, issued on November 6, 2020, available at: *https://www.theice.com/publicdocs/clear_credit/circulars/Circular_2020_070.pdf.*

[3] The presentation on Index Swaption settlement amounts is available at: *https://www.theice.com/publicdocs/Index_Option_Settlement_Payments.pdf.*

Restructuring Procedures).[4] If the expiration date occurs prior to commencement of the period, the Underlying New Trade will be subject to the provisions of the CDS Restructuring Rules in Subchapter 26E (and may become a Triggered Restructuring CDS Transaction thereunder). If the Expiration Date occurs on or following commencement of such period, neither party will be permitted to deliver an MP Notice, the Underlying New Trade cannot become a Triggered Restructuring CDS Transaction and no Event Determination Date or settlement will occur.

II. Exercise Procedures

The Exercise Procedures supplement the provisions of Subchapter 26R of the Rules with respect to Index Swaptions and provide further detail as to the manner in which Index Swaptions may be exercised by Swaption Buyers, the manner in which ICC will assign such exercises to Swaption Sellers, and certain actions that ICC may take in the event of technical issues.

ICC proposes an enhancement to the exercise and assignment process in the Exercise Procedures. ICC proposes to revise Paragraph 1, which sets out key definitions used for the exercise of Index Swaptions, to reference Paragraph 2.2(e) in respect of the Pre-Exercise Notification Period. Paragraph 2.2(e) describes the Pre-Exercise Notification Period during which an exercising party can submit, modify, and/or withdraw preliminary exercise notices. The Exercise Procedures allow firms to submit preliminary exercise notices such that the preliminary instructions can be used as the final exercise instructions in the event of a communications failure during the exercise window. The proposed changes allow ICC to identify each exercising party's ''in the money'' Index Option open positions for the relevant expiration date and submit, on behalf of the exercising party, preliminary exercise notices for all such in ''the money'' positions. Such preliminary exercise notices submitted by ICC for an exercising party may be modified or withdrawn by the exercising party during the Pre-Exercise Notification Period. Additionally, ICC proposes a related change to Paragraph 2.2(i) to reference ICC's ability to submit, on behalf of an exercising party, a preliminary exercise notice.

ICC proposes updates to Paragraphs 2.6 and 2.8, which include procedures to address a failure of the electronic system established by ICC for exercise (''Exercise System Failure''). In such case, Paragraph 2.6 provides ICC with several options including, canceling and rescheduling the Exercise Period (*i.e.,* the period on the expiration date of an Index Swaption during which the Swaption Buyer may deliver an exercise notice to ICC to exercise all or part of such Index Swaption). The proposed changes clarify that canceling and rescheduling the Exercise Period may include scheduling a new Pre-Exercise Notification Period, in which case any preliminary exercise notices and exercise notices submitted prior will be ineffective. Paragraph 2.8 addresses the situation where ICC will automatically exercise on the expiration date each open position (of all exercising parties) in an Index Swaption that is determined by ICC to be ''in the money'' on such date. ICC proposes the inclusion of additional language relating to its determination of whether an Index Swaption is ''in the money'' in connection with the clearing of iTraxx Index Swaptions.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad–22.[6] In particular, Section 17A(b)(3)(F) of the Act[7] requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest. ICC proposes minor changes to the Rules and Exercise Procedures to support the clearing of Index Swaptions. As described above, with respect to iTraxx Index Swaptions, ICC proposes amending the procedures for an M(M)R Restructuring Credit Event in Rule 26R–319(c) and for the determination of whether an Index Swaption is ''in the money'' in Paragraph 2.8 the Exercise Procedures. The amended Exercise Procedures incorporate an additional safety feature, including in the case of a technology or communication error, to allow ICC to submit preliminary exercise notices on behalf of exercising parties, as described in Paragraph 2.2(e). The additional clarifications ensure that the Rules and Exercise Procedures remain effective, clear, and up-to-date, including by omitting the description of Additional Accrual in Rule 26R–319(b), which ICC does not consider necessary in the Rules. Accordingly, in ICC's view, the proposed rule change will further ensure that ICC's Rules and policies and procedures clearly reflect the terms and conditions applicable to Index Swaptions and is thus consistent with the prompt and accurate clearing and settlement of the contracts cleared by ICC, including Index Swaptions, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[8]

The amendments would also satisfy relevant requirements of Rule 17Ad–22.[9] Rule 17Ad–22(e)(1)[10] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. The Exercise Procedures supplement the provisions of Subchapter 26R of the Rules with respect to Index Swaptions and further ensure that ICC's Rules clearly reflect the terms and conditions applicable to Index Swaptions. The proposed changes would support the clearing of Index Swaptions by ICC, including updates related to iTraxx Index Swaptions and other clarifications, to ensure that the ICC Rules and Exercise Procedures clearly and accurately reflect the requirements and procedures applicable to iTraxx Index Swaptions and Index Swaptions more generally. The proposed rule change would continue to support the legal basis for ICC's clearance of Index Swaptions and operation of the exercise and assignment process, including addressing situations where there are technical issues. As such, the proposed rule change would satisfy the requirements of the Rule 17Ad–22(e)(1).[11]

Rule 17Ad–22(e)(10)[12] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments,

[4] ICC Restructuring Procedures available at: *https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Restructuring_Procedures.pdf.*

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 240.17Ad–22.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] *Id.*

[9] 17 CFR 240.17Ad–22.

[10] 17 CFR 240.17Ad–22(e)(1).

[11] *Id.*

[12] 17 CFR 240.17Ad–22(e)(10).

and establish and maintain operational practices that identify, monitor, and manage the risks associated with such physical deliveries. The Rules continue to clearly set out the procedures for settlement of Index Swaptions on exercise, which result in the creation of a cleared underlying index CDS Contract (and in some cases in the event of a Restructuring Credit Event, an Underlying New Trade. The proposed Rule amendments consist of changes related to the clearing of iTraxx Index Swaptions and other clarifications. ICC proposes to omit the description of Additional Accrual in Rule 26R–319(b), which ICC does not consider necessary in the Rules. A more comprehensive explanation on the determination of Index Swaption settlement amounts would remain, and is more fitting, in the circular and presentation on ICC's website. Regarding of iTraxx Index Swaptions, ICC would revise Rule 26R–319(c), applicable in the case of a relevant M(M)R Restructuring Credit Event, and the treatment of the Underlying New Trade would depend on whether the expiration date occurred prior to, or on or following, the commencement of the CEN Triggering Period. In ICC's view, the Rules continue to enable ICC to identify and manage the risks of settlement of Index Swaptions on exercise. As such, the amendments would satisfy the requirements of Rule 17Ad–22(e)(10).[13]

Rule 17Ad–22(e)(17)[14] requires, in relevant part, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage its operational risks by (i) identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls; and (ii) ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. The Exercise Procedures allow ICC to manage the operational risks associated with the exercise and assignment process by establishing procedures for the exercise and assignment of Index Swaptions, which allows ICC to identify plausible sources of operational risks in clearing Index Swaptions and minimize their impact through appropriate systems, policies, procedures, and controls. The proposed changes allow ICC to identify each exercising party's ''in the money'' Index Option open positions for the relevant expiration date and submit preliminary exercise notices for all such in ''the money'' positions. These revisions are intended to serve as a safety feature, including in the case of a technology or communication error, and such preliminary exercise notices submitted by ICC may be modified or withdrawn by the exercising party during the Pre-Exercise Notification Period. Such procedures are designed to help mitigate the impact from technical issues to ensure that the system has a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. The proposed rule change is therefore reasonably designed to meet the requirements of Rule 17Ad–22(e)(17).[15]

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The proposed changes to the ICC Rules and ICC Exercise Procedures will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes 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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2021–006 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–2021–006. 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–2021–006 and should be submitted on or before April 28, 2021.

[13] *Id.*

[14] 17 CFR 240.17Ad–22(e)(17)(i)–(ii).

[15] *Id.*

[16] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07115 Filed 4–6–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91456; File No. SR–CBOE–2021–019]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 4.5 (Series of Option Contracts Open for Trading) in Connection With Limiting the Number of Strikes Listed for Short Term Option Series Which Are Available for Quoting and Trading on the Exchange

April 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2021, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 4.5 (Series of Option Contracts Open for Trading) in connection with limiting the number of strikes listed for Short Term Option Series which are available for quoting and trading on the Exchange. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 4.5 (Series of Option Contracts Open for Trading). Specifically, this proposal seeks to widen the intervals between strikes in order to limit the number of strikes listed for multiply listed equity options classes (excluding options on Exchange-Traded Funds (''ETFs'') and Exchange-Traded Notes (''ETNs'')) within the Short Term Option Series program that have an expiration date more than 21 days from the listing date.

Background

Current Rule 4.5 permits the Exchange, after a particular class of options (call option contracts or put option contracts relating to a specific underlying stock, which includes ETFs[5] and ETNs[6] or calculated index) has been approved for listing and trading on the Exchange, to open for trading series of options therein. The Exchange may list series of options for trading on a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The term ''ETF'' (Exchange-Traded Fund) (and the term ''Unit'') means a share or other security traded on a national securities exchange and defined as an NMS stock as set forth in Rule 4.3. *See* Rule 1.1; *see also* Rule 4.3.06(a). Securities deemed appropriate for options trading include Units that: (1) Represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse purchase agreements (the ''Financial Instruments''), and money market instruments, including, but no limited to, U.S. government securities and repurchase agreements (the ''Money Market Instruments'') comprising or otherwise based on or representing investments in indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments); or (2) represent interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on deposited non-U.S. currency, if any, declared and paid by the trust (''Currency Trust Shares''); or (3) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (''Commodity Pool Units''); or (4) represent interests in the SPDR Gold Trust or the iShares COMEX Gold Trust or the iShares Silver Trust or the ETFS Silver Trust or the ETFS Gold Trust or the ETFS Palladium Trust or the ETFS Platinum Trust or the Sprott Physical Gold Trust; or (5) represents an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (''NAV''), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (''Managed Fund Share'').

[6] The term ''ETN'' (Exchange-Traded Note) (and the term ''Index-Linked Security'') means a share traded on a national securities exchange that is an NMS stock and represents ownership of a security that provides for payment at maturity as set forth in Rule 4.3. *See* Rule 1.1; *see also* Rule 4.3.13(a). Securities deemed appropriate for options trading shall include shares or other securities (''Equity Index-Linked Securities,'' ''Commodity-Linked Securities,'' ''Currency-Linked Securities,'' ''Fixed Income Index-Linked Securities,'' ''Futures-Linked Securities,'' and ''Multifactor Index-Linked Securities,'' collectively known as ''Index-Linked Securities'' or ETNs) that are principally traded on a national securities exchange and an NMS Stock, and represent ownership of a security that provides for the payment at maturity.

weekly,[7] monthly [8] or quarterly [9] basis. Interpretation and Policy .01 to Rule 4.5 sets forth the intervals between strike prices of series of options on individual stocks generally,[10] and Rule 4.5(d)(5) specifically sets forth intervals between strike prices on Short Term Option Series. Additionally, the Exchange may list series of options pursuant to the $1 Strike Price Interval Program,[11] the $0.50 Strike Program,[12] the $2.50 Strike Price Program,[13] and the $5 Strike Program.[14]

The Exchange's proposal seeks to amend the listing of weekly series of options (*i.e.* Short Term Option Series) by adopting new Rule 4.5(d)(6),[15] which widens the permissible intervals between strikes, thereby limiting the number of strikes listed, for multiply listed equity options (excluding options on ETFs and ETNs) that have an expiration date more than 21 days from the listing date. This proposal does not amend the monthly or quarterly listing rules, nor does it amend the $1 Strike Price Interval Program, the $0.50 Strike Program, the $2.50 Strike Price Program, or the $5 Strike Program.

Short Term Option Series Program

After an option class has been approved for listing and trading on the Exchange,[16] Rule 4.5(d) permits the Exchange to open for trading on any Thursday or Friday that is a business day (''Short Term Option Opening Date'') series of options on that class that expire at the close of business on each of the next five Fridays that are business days and are not Fridays on which monthly options series or Quarterly Options Series expire (''Short Term Option Expiration Dates''). The Exchange may select up to fifty currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date. In addition to the fifty option class restriction, the Exchange may also list Short Term Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules. For each option class eligible for participation in the Short Term Option Series Program, the Exchange may open up to 30 Short Term Option Series for each expiration date in that class. The Exchange may also open Short Term Option Series that are opened by other securities exchanges in option classes selected by such exchanges under their respective short term option rules.[17] Pursuant to Rule 4.5(d)(3), the Exchange may open up to 20 initial series for each option class that participates in the Short Term Option Series Program and, pursuant to Rule 4.5(d)(4), may open up to 10 additional series for each option class that participates in the Short Term Option Series Program when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. Rule 4.5(d)(5) provides that the interval between strike prices on Short Term Option Series may be: (i) $0.50 or greater where the strike price is less than $100, and $1 or greater where the strike price is between $100 and $150 for all classes that participate in the Short Term Option Series Program; (ii) $0.50 or greater for classes that trade in one dollar increments in non-Short

[7] The weekly listing program is known as the Short Term Option Series Program and is described within Rule 4.5(d).

[8] The Exchange will open at least one expiration month for each class of options open for trading on the Exchange. *See* Rule 4.5(b). The monthly expirations are subject to certain listing criteria for underlying securities described within Rule 4.3. Monthly listings expire the third Friday of the month. The term ''expiration date'' when used in respect of a series of binary options other than event options means the last day on which the options may be automatically exercised. In the case of a series of event options (other than credit default options or credit default basket options) that are be automatically exercised prior to their expiration date upon receipt by the Corporation of an event confirmation, the expiration date is the date specified by the listing Exchange; provided, however, that when an event confirmation is deemed to have been received by the Corporation with respect to such series of options, the expiration date will be accelerated to the date on which such event confirmation is deemed to have been received by the Corporation or such later date as the Corporation may specify. In the case of a series of credit default options or credit default basket options, the expiration date is the fourth business day after the last trading day for such series as such trading day is specified by the Exchange on which the series of options is listed; provided, however, that when an event confirmation is deemed to have been received by the Corporation with respect to a series of credit default options or single payout credit default basket options prior to the last trading day for such series, the expiration date for options of that series will be accelerated to the second business day following the day on which such event confirmation is deemed to have been received by the Corporation. ''Expiration date'' means, in respect of a series of range options expiring prior to February 1, 2015, the Saturday immediately following the third Friday of the expiration month of such series, and, in respect of a series of range options expiring on or after February 1, 2015 means the third Friday of the expiration month of such series, or if such Friday is a day on which the Exchange on which such series is listed is not open for business, the preceding day on which such Exchange is open for business. *See* The Options Clearing Corporation (''OCC'') By-Laws at Section 1.

[9] The quarterly listing program is known as the Quarterly Options Series Program and is described within Rule 4.5(e).

[10] The interval between strike prices of series of options on individual stocks may be $2.50 or greater where the strike price is $25.00 or less; provided, however, that the Exchange may not list $2.50 intervals (*e.g.,* $12.50, $17.50) for any class included within the $1 Strike Program if the addition of $2.50 intervals would cause the class to have strike price intervals that are $0.50 apart. *See* Rule 4.5.01(c). The interval between strike prices of series of options in individual stocks may be $5.00 or greater where the strike price is greater than $25.00. *See* Rule 4.5.01(d). The interval between strike prices of series of options in individual stocks may be $10.00 or greater where the strike price is greater than $200, except as provided in paragraph (f). *See* Rule 4.5.01(d). *See also* Rule 4.5.07, which provides for the permissible strike price intervals for options in Units (*i.e.,* ETFs) generally, and for options on options on Units of the Standard & Poor's Depository Receipts Trust (''SPY''), iShares S&P 500 Index ETF (''IVV''), PowerShares QQQ Trust (''QQQ''), iShares Russell 2000 Index Fund (''IWM''), and The DIAMONDS Trust (''DIA'').

[11] The $1 Strike Interval Program is described within Rule 4.5.01(a).

[12] The $0.50 Strike Program is described within Rule 4.5.01(b).

[13] The $2.50 Strike Price Program is described within Rule 4.5.04.

[14] The $5 Strike Program is described within Rule 4.5.01(f).

[15] As a result, the proposed rule change subsequently updates current Rule 4.5(d)(6) (Delisting) to Rule 4.5.(d)(7).

[16] The Exchange may have no more than a total of five Short Term Option Expiration Dates. Monday and Wednesday SPY Expirations (described in the paragraph below) are not included as part of this count. If the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on a Friday, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday. The Exchange may open for trading on any Friday or Monday that is a business day (''Monday SPY Expiration Opening Date'') series of options on the SPDR S&P 500 ETF Trust (''SPY'') that expire at the close of business each of the next five Mondays that are business days and are no Mondays on which Quarterly Options Series expire (''Monday SPY Expirations''), provided that any Monday SPY Expiration Opening Date that is a Friday is one business week and one business day prior to expiration. The Exchange may also open for trading on any Tuesday or Wednesday that is a business day (''Wednesday SPY Expiration Opening Date'') series of SPY options that expire at the close of business on each of the next five Wednesdays that are business days and are not Wednesdays on which Quarterly Options Series expire (''Wednesday SPY Expirations''). The Exchange may have no more than a total of five Monday SPY Expirations and no more than a total of five Wednesday SPY Expirations. Non-Monday and non-Wednesday SPY Expirations (described in the paragraph above) are not included as part of this count. If the Exchange is not open for business on the respective Friday or Monday, the Monday SPY Expiration Opening Date will be the first business day immediately prior to that respective Friday or Monday. If the Exchange is not open for business on a Monday, the expiration date for a Monday SPY Expiration will be the first business day immediately following that Monday. If the Exchange is not open for business on the respective Tuesday or Wednesday, the Wednesday SPY Expiration Opening Date will be the first business day immediately prior to that respective Tuesday or Wednesday. Similarly, if the Exchange is not open for business on a Wednesday, the expiration date for a Wednesday SPY Expiration will be the first business day immediately prior to that Wednesday. *See* Rule 4.5(d).

[17] *See* Rule 4.5(d)(1).

Term Options and that participate in the Short Term Option Series Program; or (iii) $2.50 or greater where the strike price is above $150.[18]

The Exchange notes that listings in the weekly program comprise a significant part of the standard listing in options markets and that the industry has observed a notable increase over approximately the last five years in compound annual growth rate (''CAGR'') of weekly strikes as compared to CAGR for standard third-Friday expirations.[19]

Proposal

The Exchange proposes to widen the intervals between strikes in order to limit the number of strikes listed for equity options (excluding options on ETFs and ETNs) listed as part of the Short Term Option Series Program that have an expiration date more than 21 days from the listing date, by adopting proposed Rule 4.5(d)(6). The Exchange notes that this proposal is substantively identical to the strike interval proposal recently submitted by Nasdaq BX, Inc. (''BX'') and approved by the Securities and Exchange Commission (''Commission'').[20]

The proposal widens intervals between strikes for expiration dates of equity option series (excluding options on ETFs and ETNs) beyond 21 days utilizing the three-tiered table in proposed Rule 4.5(d)(6) (presented below) which considers both the Share Price and Average Daily Volume for the option series. The table indicates the applicable strike intervals and supersedes Rule 4.5(d)(4), which currently permits 10 additional series to be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. As a result of the proposal, Rule 4.5(d)(4) would not permit an additional series of an equity option to have an expiration date more than 21 days from the listing date to be opened for trading on the Exchange despite the noted circumstances in subparagraph (d)(4) when such additional series may otherwise be added.

Tier	Average daily volume	Share price				
		Less than $25	$25 to less than $75	$75 to less than $150	$150 to less than $500	$500 or greater
1	Greater than 5,000	$0.50	$1.00	$1.00	$5.00	$5.00
2	Greater than 1,000 to 5,000[21]	1.00	1.00	1.00	5.00	10.00
3	0 to 1,000	2.50	5.00	5.00	5.00	10.00

Proposed Rule 4.5(d)(6)(A) provides that the Share Price is the closing price on the primary market on the last day of the calendar quarter. This value is used to derive the column from which to apply strike intervals throughout the next calendar quarter. Also, proposed Rule 4.5(d)(6)(A) provides that in the event of a corporate action, the Share Price of the surviving company is utilized.[22] Proposed Rule 4.5(d)(6)(B) provides that the Average Daily Volume is the total number of option contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter. Beginning on the second trading day in the first month of each calendar quarter, the Average Daily Volume is calculated by utilizing data from the prior calendar quarter based on Customer-cleared volume at OCC. For options listed on the first trading day of a given calendar quarter, the Average Daily Volume is calculated using the calendar quarter prior to the last trading calendar quarter.[23] Pursuant to current Rule 4.5(d), if the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday.

By way of example, if the Share Price for a symbol was $142 at the end of a calendar quarter, with an Average Daily Volume greater than 5,000, thereby requiring strike intervals to be listed $1.00 apart, that strike interval would apply for the calendar quarter, regardless of whether the Share Price changed to $150 or greater during that calendar quarter.[24] The proposed table within Rule 4.5(d)(6) takes into account the notional value of a security, as well as Average Daily Volume in the underlying stock, in order to widen the intervals between strikes and thereby limit the number of strikes listed for equity options (excluding options on ETFs and ETNs) in the Short Term Option Series listing program. The Exchange will utilize OCC Customer-cleared volume, as customer volume is an appropriate proxy for demand. The OCC Customer-cleared volume represents the majority of options volume executed on the Exchange, which, in turn, reflects the demand in the marketplace. The options series listed on the Exchange are intended to meet customer demand by offering an appropriate number of strikes. Non-Customer cleared OCC volume generally represents the supply side.

The proposal is intended to remove repetitive and unnecessary strike listings across the weekly expiries.

[18] Additionally, Rule 4.5(d)(5) provides that a non-Short Term Option that is on a class that has been selected to participate in the Short Term Option Series Program is referred to as a ''Related non-Short Term Option.'' Rule 4.5(d) generally provides that related non-Short Term Option series shall be opened during the month prior to expiration in the same manner as permitted in Rule 4.5(d) and in the same strike price intervals that are permitted for Short Term Option Series in Rule 4.5(d)(5).

[19] *See* Securities Exchange Act Release No. 91125 (February 12, 2021), 86 FR 10375 (February 19, 2021) (SR–BX–2020–032) (''BX Strike Interval Approval Order''); *and* SR–2020–BX–032 as amended by Amendment No. 1 (February 10, 2021) available at: *https://www.sec.gov/comments/sr-bx-2020-032/srbx2020032-8359799-229182.pdf* (''BX proposal''); *see also* BX Options Strike Proliferation Proposal (February 25, 2021) available at: *https://www.nasdaq.com/solutions/bx-options-strike-proliferation-proposal*).

[20] *See* BX Strike Interval Approval Order, *id.*

[21] The Exchange notes that while the term ''greater than'' is not present in this cell in the corresponding BX rule, the Exchange has inserted it for clarity, otherwise an Average Daily Volume of 1,000 contracts could be read to fall into two categories.

[22] The Exchange notes that corporate actions resulting in change ownership would result in a surviving company, such as a merger of two publicly listed companies, and the Share Price of the surviving company would be used to determine strike intervals pursuant to the proposed table. Corporate actions that do not result in a change of ownership, such as stock-splits or distribution of special cash dividends, would not result in a ''surviving company,'' therefore would not impact which Share Price to apply pursuant to the proposed Rule.

[23] For example, options listed as of April 1, 2021 would be calculated on April 2, 2021 using the Average Daily Volume from October 1, 2020 to December 31, 2020.

[24] The Exchange notes that any strike intervals imposed by the Exchange's Rules will continue to apply. In this example, the strikes would be in $1 intervals up to (but not including) $150, which is the upper limit imposed by Rule 4.5(d)(5).

Specifically, the proposal seeks to reduce the number of strikes listed in the furthest weeklies, which generally have wider markets and therefore lower market quality.[25] The proposed strike intervals are intended to widen permissible strike intervals in multiply listed equity options (excluding options on ETFs and ETNs) where there is less volume as measured by the Average Daily Volume tiers. Therefore, the lower the Average Daily Volume, the greater the proposed spread between strike intervals. Options classes with higher volume contain the most liquid symbols and strikes, which the Exchange believes makes the finer proposed spread between strike intervals for those symbols appropriate. Additionally, lower-priced shares have finer strike intervals than higher-priced shares when comparing the proposed spread between strike intervals. Today, weeklies are available on 16% of underlying products. The proposal limits the density of strikes listed in series of options, without reducing the classes of options available for trading on the Exchange. Short Term Option Series with an expiration date greater than 21 days from the listing date currently equate to 7.5% of the total number of strikes in the options market, which equals 81,000 strikes.[26] The Exchange expects this proposal to result in the limitation of approximately 20,000 strikes within the Short Term Option Series, which is approximately 2% of the total strikes in the options markets.[27] The Exchange understands there has been an inconsistency of demand for series of options beyond 21 calendar days.[28] The proposal takes into account customer demand for certain options classes, by considering both the Share Price and the Average Daily Volume, in order to remove certain strike intervals where there exist clusters of strikes whose characteristics closely resemble one another and, therefore, do not serve different trading needs,[29] rendering these strikes less useful. The Exchange also notes that the proposal focuses on strikes in multiply listed equity options, and excludes ETFs and ETNs, as the majority of strikes reside within equity options.

Additionally, proposed Rule 4.5(d)(6)(C) provides that options that are newly eligible for listing pursuant to Rule 4.3 and designated to participate in the Short Term Option Series program pursuant to Rule 4.5(d) will not be subject to subparagraph (d)(6) (as proposed) until after the end of the first full calendar quarter following the date the option class was first listed for trading on any options market.[30] As proposed, the Exchange is permitted to list options on newly eligible listings, without having to apply the wider strike intervals, until the end of the first full calendar quarter after such options were listed. The proposal thereby permits the Exchange to add strikes to meet customer demand in a newly listed options class. A newly eligible option class may fluctuate in price after its initial listing; such volatility reflects a natural uncertainty about the security. By deferring the application of the proposed wider strike intervals until after the end of the first full calendar quarter, additional information on the underlying security will be available to market participants and public investors, as the price of the underlying has an opportunity to settle based on the price discovery that has occurred in the primary market during this deferment period. Also, the Exchange has the ability to list as many strikes as are permissible for the Short Term Option Series once the expiry is no more than 21 days. Short Term Option Series that have an expiration date no more than 21 days from the listing date are not subject to the proposed strike intervals, which allows the Exchange to list additional, and potentially narrower, strikes in the event of market volatility or other market events. These metrics are intended to align expectations for determining which strike intervals will be utilized. Finally, proposed Rule 4.5(d)(6)(D) provides that, notwithstanding the strike intervals imposed in proposed subparagraph (d)(6), the proposal does not amend the range of strikes that may be listed pursuant to subparagraph (d)(5).

While the current listing rules permit the Exchange to list a number of weekly strikes on its market, in an effort to encourage Market-Makers to deploy capital more efficiently, as well as improve displayed market quality, the proposal aims to reduce the density of strikes listed in later weeks by widening the intervals between strikes listed for equity options (excluding options on ETFs and ETNs) which have an expiration date more than 21 days from the listing date. The Exchange requires Designated Primary Market-Makers (''DPMs''), Lead Market-Makers (''LMMs'') and Market-Makers to quote during a certain amount of time in the trading day and in a certain percentage of series in their assigned options classes to maintain liquidity in the market.[31] With an increasing number of strikes being listed across options exchanges, Market-Makers must expend their capital to ensure that they have the appropriate infrastructure to meet their quoting obligations on all options markets in which they are assigned in option classes. The Exchange believes that by widening the intervals between strikes listed for equity options (excluding options on ETFs and ETNs), thus reducing the number of strikes listed on the Exchange, the proposal will likewise reduce the number of weekly strikes in which DPMs, LMMs and Market-Makers are required to quote and, as a result, allow DPMs, LMMs and Market Makers to expend their capital in the options market in a more efficient manner. Due to this increased efficiency, the Exchange believes that the proposal may improve overall market quality on the Exchange by widening the intervals between strikes in multiply listed equity options (excluding options on ETFs and ETNs) that have an expiration date more than 21 days from the listing date. The proposal is intended to balance the goal of limiting the number of listed strikes with the needs of market participants. The Exchange believes that the various permissible strike intervals will continue to offer market participants the ability to select the appropriate strikes to meet their investment objectives.

Implementation

The Exchange, along with BX and other options exchanges that intend to submit the same strike interval

[25] *See* BX proposal, *supra* note 19, which presents tables that focus on data for 10 of the most and least actively traded symbols and demonstrate average spreads in weekly options during the month of August 2020.

[26] The Exchange notes that this proposal is an initial attempt at reducing strikes and anticipates filing additional proposals to continue reducing strikes. The percentage of underlying products and percentage of and total number of strikes, are approximations and may vary slightly at the time of this filing. The Exchange intends to decrease the overall number of strikes listed on the Cboe Cboe-affiliated options exchanges in a methodical fashion, so that it may monitor progress and feedback from its Trading Permit Holders (''TPHs''). The Exchange also notes that its affiliated options exchanges, Cboe EDGX Exchange, Inc. (''EDGX Options'') and Cboe BZX Exchange, Inc. (''BZX Options'') plan to submit identical proposals (Cboe C2 Exchange, Inc. incorporates Rule 4.5 by reference).

[27] From information drawn from time period between January 2020 and May 2020. *See* BX proposal, *supra* note 19.

[28] *See* BX proposal, *supra* note 19.

[29] For example, two strikes that are densely clustered may have the same risk properties and may also be the same percentage out-of-the money.

[30] For example, if an options class became newly eligible for listing pursuant to Rule 4.3 on March 1, 2021 (and was actually listed for trading that day), the first full quarterly lookback would be available on July 1, 2021. This option would become subject to the proposed strike intervals on July 2, 2021.

[31] *See* Rule 5.52(d), Rule 5.54(a), and Rule 5.55(a).

proposal, intends to begin implementation of the proposed rule change prior to June 30, 2021. The Exchange will issue a notice of the planned implementation date to it TPHs in advance. Once implemented, the Exchange will provide notice [32] to its TPHs of the Short Term Option Series eligible in a new quarter to be listed pursuant to Rule 4.5(d)(6).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[33] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [34] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [35] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposal seeks to widen the permissible intervals between strikes listed for equity options (excluding options on ETFs and ETNs) in order to limit the number of strikes listed in the Short Term Option Series program that have an expiration date more than 21 days. The proposal removes impediments to and perfects the mechanism of a free and open market and a national market system by encouraging Market-Makers to deploy capital more efficiently, which may improve market quality overall on the Exchange, by widening the intervals between strikes when applying the strike interval table to multiply listed equity options (excluding options on ETFs and ETPs) that have an expiration date more than 21 days from the listing date. As described above, the Exchange requires DPMs, LMMs and Market-Makers to quote during a certain amount of time in the trading day and in a certain percentage of series in their assigned options classes to maintain liquidity in the market.[36] With an increasing number of strikes due, in part, to tighter intervals being listed across options exchanges, Market-Makers must currently expend their capital to ensure that they have the appropriate infrastructure to meet their quoting obligations on all options markets in which they are assigned in options classes. The Exchange believes that this proposal will widen the intervals between strikes listed on the Exchange, thereby reducing the number of weekly options listed on its market in later weeks in which Market-Makers are required to quote and, in turn, allowing DPMs, LMMs and Market-Makers to expend their capital in the options market in a more efficient manner.

The Exchange believes that limiting the permissible strikes for multiply listed equity options (excluding options on ETFs and ETNs) that have an expiration date more than 21 days from the listing date will not significantly disrupt the market, as the majority of the volume traded in weekly options exists in options series which have an expiration date of 21 days or less. The proposal will limit the number of strikes listed in series of options without reducing the number of classes of options available for trading on the Exchange. The proposal allows the Exchange to determine the weekly strike intervals for multiply listed equity Short Term Option Series listed in the later weeks by taking into account customer demand for certain options classes by considering both the Share Price and the Average Daily Volume in the underlying security. The Exchange utilizes OCC Customer-cleared volume, as customer volume is an appropriate proxy for demand. Whereas non-Customer cleared OCC volume generally represents the supply side, the Exchange believes OCC Customer-cleared volume represents the majority of options volume executed on the Exchange, which, in turn, reflects the demands in the marketplace and is therefore intended to assist the Exchange in meeting customer demand by offering an appropriate number of strikes.

The proposal is intended to remove certain strikes where there exist clusters of strikes whose characteristics closely resemble one another and, therefore, do not serve different trading needs, which currently results in less useful strikes. As such, the proposal protects investors and the general public by removing unnecessary choices for an options series, which the Exchange believes may improve market quality. The proposal seeks to reduce the number of strikes in the furthest weeklies, which generally have wider markets, and, therefore, lower market quality. The implementation of the Strike Interval table is intended to allow for greater spreads between strike intervals in multiple listed equity options where there is less volume as measured by the Average Daily Volume tiers. Therefore, the lower the Average Daily Volume, the wider the proposed spread between strike intervals, and the higher the Average Daily Volume (*i.e.,* the options classes that contain the most liquid symbols and strikes), the narrower the proposed spread between strike intervals. Additionally, the proposed strike intervals are finer for lower-priced shares than higher-priced shares.[37] As a result, the Exchange believes that, by limiting the permissible strikes for multiple listed equity options (excluding options on ETFs and ETNs) that have an expiration date more than 21 days from the listing date pursuant to the proposed Strike Interval table, the proposal may improve overall market quality on the Exchange, which serves to protect investors and the general public.

Further, utilizing the second trading day of a calendar quarter allows the Exchange to accumulate data regarding OCC Customer-cleared volume from the entire prior calendar quarter and allows the calculation of Average Daily Volume to account for trades executed on the last day of the previous calendar quarter, which will have settled by the second trading day.[38] The Exchange believes that applying the previous calendar quarter for the calculation is appropriate to reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it may result in a

[32] *See* Rule 1.5, which provides that the Exchange announces to Trading Permit Holders all determinations it makes pursuant to the Rules via: (1) Specifications, Notices, or Regulatory Circulars with appropriate advanced notice, which are posted on the Exchange's website, or as otherwise provided in the Rules; (2) electronic message; or (3) other communication method as provided in the Rules. In its Notices disseminated to TPHs regarding the Short Term Option Series eligible in a new quarter to be listed pursuant to Rule 4.5(d)(6), the Exchange will include for each eligible option class: The closing price of the underlying; the Average Daily Volume of the option class; and the eligible strike category (per the proposed table) in which the eligible option class falls under as a result of the closing price and Average Daily Volume.

[33] 15 U.S.C. 78f(b).

[34] 15 U.S.C. 78f(b)(5).

[35] *Id.*

[36] *See supra* note 31.

[37] The Exchange notes that it has discussed the proposed strike intervals with various TPHs.

[38] Options contracts settle one business day after trade date. Strike listing determinations are made the day prior to the start of trading in each series.

more reliable measure of Average Daily Volume than a shorter period).

As stated, the proposal is substantively identical to the strike interval proposal recently submitted by BX and approved by the Commission.[39] The Exchange believes that varied strike intervals will continue to offer market participants the ability to select the appropriate strike interval to meet that market participants' investment objectives.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as the proposed rule change limits the number of Short Term Option Series strikes available for quoting and trading on the Exchange for all market participants. Therefore, all market participants will equally be able to transact in options series in the strikes listed for trading on the Exchange. The proposal is intended to reduce the number of strikes for weekly options listed in later weeks without reducing the number of classes of options available for trading on the Exchange while also continuing to offer an appropriate number of strikes the Exchange believes will meet market participants' investment objectives.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as it only impacts the permissible strike intervals for certain options series listed on the Exchange. Additionally, another options exchange has recently implemented a substantively identical rule for listing Short Term Option series strike intervals on its exchange, approved by the Commission.[40] The proposal is a competitive response that will permit the Exchange to list the same series in multiple listed options as another options exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[41] and Rule 19b–4(f)(6) thereunder.[42]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2021–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2021–019. 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2021–019, and should be submitted on or before April 28, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

J. Matthew DeLesDernier,

Assistant Secretary.

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[39] *See* BX Strike Interval Approval Order, *supra* note 19.

[40] *See* BX Strike Interval Approval Order, *supra* note 19.

[41] 15 U.S.C. 78s(b)(3)(A).

[42] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91458; File No. SR–BX–2021–008]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Enhance the End of Day Summary Message on Nasdaq Last Sale Plus

April 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2021, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to enhance the End of Day (''EOD'') summary message on Nasdaq Last Sale (''NLS'') Plus by replacing the current high, low and closing price of a security based on its trading on BX, The Nasdaq Stock Market, LLC (''Nasdaq''), and Nasdaq PHLX LLC (''PSX'') with the high, low and closing price of a security published by the securities information processors (''SIPs''), and adding the opening price of a security as published by the SIPs to that message. This is a companion filing that will modify the definition of NLS Plus contained in the Nasdaq BX rulebook to conform to the definitions provided in the Nasdaq and Nasdaq PSX rulebooks. The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to enhance the EOD summary message on NLS Plus by replacing the current high, low and closing price of a security based on its trading on the BX, Nasdaq, and Nasdaq PSX exchanges with the consolidated high, low and closing price as published by the SIPs, and adding the opening price of a security published by the SIPs to that message.[3] The proposed changes to NLS Plus were filed by Nasdaq on February 17, 2021, and published in the **Federal Register** on March 8, 2021.[4] Nasdaq PSX will be submitting a similar filing concurrently with this filing. The purpose of this filing is to modify the definition of NLS Plus in the Nasdaq BX rulebook to conform to the definitions provided in the Nasdaq and Nasdaq PSX rulebooks.

Nasdaq's proposal to enhance the EOD summary message on NLS Plus was in response to requests by firms using NLS Plus for a broader benchmark against which to compare trades on the Nasdaq exchanges. Specifically, approximately 30 firms have requested that Nasdaq distribute benchmark prices on NLS Plus to provide retail investors and the general investing public with a static benchmark against which to compare the price movements shown on NLS Plus using standard high, low, opening and closing prices for U.S. markets as a whole. In response to that feedback, and also partly in response to recent changes by competitor exchanges to their end of day messages,[5] the Exchange proposes to enhance its EOD message for NLS Plus—which currently provides the high, low and closing price of a security based on its trading on Nasdaq affiliates—with a new EOD message that provides the high, low and closing price published by the SIPs, and add a new field with the opening price of a security as published by the SIPs.[6]

The Exchange proposes that this change become operative on May 17, 2021, to allow time to conduct customer testing in advance of the date of launch.

Nasdaq Last Sale Plus

NLS Plus is a comprehensive data feed that offers retail investors, the general investing public, and other customers access to the last sale products offered by BX,[7] Nasdaq, and Nasdaq PSX, and the consolidated volume information published on the SIPs for Tapes A, B, and C, in a convenient format that includes both real-time and end of day information.[8] It is, in essence, a market data vendor product that consolidates information from multiple Nasdaq exchanges and the SIPs. This product directly competes against similar products offered by other exchanges, and faces potential competition from data vendors, which can obtain and distribute SIP data on the same terms as Nasdaq.[9]

At the close of each trading day, Nasdaq disseminates an EOD summary message on NLS Plus that includes the following information for all active Nasdaq- and non-Nasdaq-listed securities:

- *Nasdaq Price High:* The highest price reported for a last sale transaction on any Nasdaq venue for the issue symbol during the current trading day.
- *Nasdaq Price Low:* The lowest price reported for a last sale transaction on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The securities information processors issue consolidated trade information pursuant to the UTP Plan and the CTA/CQ Plan.

[4] *See* Securities Exchange Act Release No. 91241 (March 2, 2021), 86 FR 13427 (March 8, 2021) (SR-Nasdaq-2021–010).

[5] *See* Securities Exchange Act Release No. 89083 (June 17, 2020), 85 FR 37706 (June 23, 2020) (SR-CboeEDGX–2020–029) (amending the content of the Cboe One Feed to identify the primary listing market's official opening and closing price); NYSE Best Quote and Trades Client Specification (March 30, 2020) (updated on January 31, 2020, to publish the listing market official opening and closing price in the Consolidated Stock Summary Messages) available at *https://www.nyse.com/publicdocs/nyse/data/NYSE_BQT_Client_Specification_v2.3a.pdf.*

[6] The Proposal also clarifies the description of the information provided in NLS Plus. It removes an unnecessary sentence at the end of the description of NLS Plus stating that volume information reflects trading activity in Tape A and B Securities, and replaces it with an earlier reference to Tape A and B securities that provides the same information. It also separates the description of the end of day trade summary into two sentences for greater clarity: the first sentence lists the data provided by the Nasdaq equity exchanges, and the second sentence identifies the consolidated information obtained from Tapes A, B and C. The phrases ''as well as consolidated volume of,'' and ''Cumulative Consolidated Market Volume'' are deleted to remove repetitive language that might cause confusion. This filing also corrects an outdated reference to NASDAQ OMX Information LLC in Section 139(b) by removing the old firm name and replacing it with Nasdaq Information LLC, and replaces an outdated reference to Nasdaq Rule 7032 in Section 139(b)(4) with the correct citation to Equity 7, Section 132 of the Nasdaq Rulebook. *See* Securities Exchange Act Release No. 84684 (November 29, 2018), 83 FR 62936 (December 6, 2018) (SR–NASDAQ–2018–098).

[7] BX Last Sale is comprised of two proprietary data feeds containing real-time last sale information for trades executed on the Exchange. ''BX Last Sale for Nasdaq'' contains all such transaction reports for Nasdaq-listed stocks, and ''BX Last Sale for NYSE/NYSE American'' contains all such transaction reports for NYSE-listed stocks and stocks listed on NYSE American and other Tape B listing venues. *See* Equity 7, Section 139(a).

[8] The full list of NLS Plus components is as follows: Trade Price, Trade Size, Sale Condition Modifiers, Cumulative Consolidated Market Volume for Tape A, B, and C securities, End of Day Trade Summary, Adjusted Closing Price, IPO Information, Bloomberg ID, and pertinent regulatory Information (such as Market Wide Circuit Breaker, Reg SHO Short Sale Price Test Restricted Indicator, Trading Action, and Symbol Directory). *See* Equity 7, Section 139(b).

[9] *See* Securities Exchange Act Release No. 76771 (December 24, 2015), 80 FR 81601 n.3 (December 30, 2015) (SR–BX–2015–082) (noting that, in distributing NLS Plus, Nasdaq ''performs precisely the same functions as Bloomberg, Thomson Reuters, and other market data vendors.'').

any Nasdaq venue for the issue symbol during the current trading day.

• *Nasdaq Price Closing:* For Nasdaq-listed securities, this is the Nasdaq Official Closing Price value, if available. For non-Nasdaq-listed securities, it is the final last sale eligible transaction reported by any Nasdaq venue for the issue during normal market hours.

• *Consolidated Volume:* Reflects the total volume for the issue reported at the consolidated market level.[10]

Proposal

The Exchange proposes to enhance the current EOD summary message by providing the open, high, low, close and volume of a security based on the consolidated data provided by the UTP and CTA/CQ plans for Tape A, B [11] and C [12] securities. This will require replacing the current high, low, and close on the Nasdaq exchanges with the following three fields:

• *Consolidated Price High:* The highest price of any high/low eligible transaction on Tapes A, B or C received on the trading day.

• *Consolidated Price Low:* The lowest price of any high/low eligible transaction on Tapes A, B or C received on the trading day.

• *Consolidated Price Close:* The final last sale eligible transaction on Tapes A, B or C received on the trading day.[13]

It will also require adding the following new field to the EOD summary message:

• *Consolidated Price Open:* The first last sale eligible transaction received on the trading day for Tapes A, B or C.

The Consolidated Volume field will not change.

The above data will be available to users of the NLS Plus feed on a delayed basis, 15 minutes after the real-time dissemination of the above data points on the UTP and CTA/CQ data feeds for that day. The Exchange is not proposing any change to NLS Plus fees as a result of this modification.

Discussion

The NLS Plus data feed, designed for distribution to the investing public,[14] is purchased by broker-dealers for dissemination to retail investors in the context of the brokerage relationship and financial media websites for the general investing public, among others. Approximately 30 firms that purchase or may purchase NLS Plus have requested that Nasdaq modify the EOD summary information to help investors place trades on the Nasdaq exchanges in the context of U.S. markets as a whole, rather than just the Nasdaq exchanges. Specifically, these firms requested that Nasdaq use benchmark prices for the high, low, opening and closing price of a security as published by the securities information processors to help investors understand price movements on the Nasdaq exchanges.

This suggestion by Nasdaq's customers is comparable to changes in the end of day messages undertaken recently by two of Nasdaq's chief competitors, Cboe and NYSE, in their top-of-book data feeds. In 2020, both amended their end of day messages to identify the primary listing market's official opening and closing price after a 15-minute delay, which, similar to the proposal by Nasdaq's customers, establish an external benchmark against which to evaluate exchange data.[15]

In light of customer requests and changing industry standards, the Exchange has determined that the requested change to the EOD summary message is in the best interest of our customers. The end of day data published by the securities information processors provides useful information on the state of the U.S. market as a whole, and including it on the NLS Plus feed will enhance investor understanding of the proprietary data distributed by the Exchange.[16] The proposal will also provide consumers with greater choice by offering an alternative to other EOD summaries offered in the market. The Exchange therefore proposes to modify its EOD summary message to provide the Open, High, Low, Close and Volume of a security based on the consolidated data provided by the SIPs. This EOD message will be based on data obtained from the securities information processors, and will be distributed by Nasdaq as a vendor of SIP data, and will be subject to competition from all distributors of SIP data.

The proposed change to the EOD summary message is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants, and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other.[17]

The Exchange expects that the new EOD message will be attractive to potential customers, and, based on conversations with potential customers and our overall familiarity with the market, the Exchange expects between approximately 10 and 20 additional customers for NLS Plus as a result of the proposed change.[18]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market

[10] *See* NLS Plus Version 3.0 Technical Specifications, Section 5.8.5 (End of Day Trading Summary) at 29, available at *http://www.nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/NLSPlusSpecification3.0.pdf.*

[11] Tape A and Tape B securities are disseminated pursuant to the Security Industry Automation Corporation's (SIAC's) Consolidated Tape Association Plan/Consolidated Quotation System (''CTA/CQS'' or ''CTA'').

[12] Tape C securities are disseminated pursuant to the NASDAQ Unlisted Trading Privileges (''UTP'') Plan.

[13] If there are no trades or no qualifying trades for a specific issue, all relevant fields for the EOD summary message will be left blank.

[14] *See* Securities Exchange Act Release No. 76771 (December 24, 2015), 80 FR 81601 at n.3 (December 30, 2015) (SR–BX–2015–082) (explaining that the primary purpose of the Nasdaq subsidiary distributing the NLS Plus feed ''is to combine publicly available data from the three filed last sale products of the exchange subsidiaries of Nasdaq, Inc. and from the network processors for the ease and convenience of market data users and vendors, and ultimately the investing public.'').

[15] *See* Securities Exchange Act Release No. 89083 (June 17, 2020), 85 FR 37706 (June 23, 2020) (SR–CboeEDGX–2020–029) (amending the content of the Cboe One Feed to identify the primary listing market's official opening and closing price after a 15 minute delay, effective July 10, 2020); NYSE Best Quote and Trades Client Specification, Version 2.3a (March 30, 2020) available at *https://www.nyse.com/publicdocs/nyse/data/NYSE_BQT_Client_Specification_v2.3a.pdf* (updated on January 31, 2020, to publish the listing market official opening and closing price in the Consolidated Stock Summary Messages).

[16] Any customer that requires access to the high, low, and closing price of a security on the Nasdaq equity exchanges alone, and not the U.S. markets as a whole, would continue to have access to that information on the real-time NLS Plus data feed.

[17] Although this is not a fee filing, the Exchange is addressing this question to provide as complete as possible an evaluation of the proposed change. *See* Division of Trading and Markets, U.S. Securities and Exchange Commission, ''Staff Guidance on SRO Filings Related to Fees'' (May 21, 2019) (''Staff Guidance''), available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (indicating that the discussion of purpose should indicate ''whether the relevant product or service, including the corresponding proposed fee or fee change, is targeted at—or expected to be limited in its applicability to—a specific segment(s) of market participants (and if so, the related details))''.

[18] *See id.* (requesting that the discussion of purpose address ''the projected number of purchasers (including members, as well as non-members) of any new or modified product or service and the expected number of purchasers likely to be subject to a new fee or pricing tier, including members and non-members . . .'').

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

system, and, in general to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In 2015, the Commission found the creation of the NLS Plus data feed to be ''consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. . . .'' [21] The NLS Plus Approval Order noted that NLS Plus disseminated an End of Day Trade Summary among other messages,[22] and consolidated volume information obtained from the UTP and CTA Plans.[23] As NLS Plus and the current end of day messages and volume information have already been shown to be consistent with Section 6(b) of the Act, this analysis therefore focuses on the consistency of the proposal to enhance the EOD summary message with data on the open, high, low and closing price of a security published by the SIPs.

NLS Plus competes with the substitute top-of-book proprietary data products offered by other exchanges, including the NYSE BQT feed, which disseminates top-of-book information from the NYSE, NYSE American, NYSE Arca, NYSE National, and NYSE Chicago exchanges,[24] and the Cboe One Summary Feed, which disseminates data from the BZX Exchange, BYX Exchange, EDGX Exchange and EDGA Exchange.[25] NLS Plus also competes with the offerings of data vendors that distribute the proprietary data feeds of Nasdaq and other exchanges. Of particular importance here, Nasdaq obtains data from the SIPs on the same terms as any data vendor, and Nasdaq has no latency, cost, or other advantage in the distribution of end of day SIP data as proposed herein. Retail customers are potentially able to obtain such information from any distributor of SIP data.

This Proposal reflects the competitive nature of these markets. As noted above, both NYSE and Cboe expanded their end of day summary messages in 2020 to identify the primary listing market's official opening and closing price after a 15-minute delay.[26] The Exchange's change to the EOD summary message is, in part, a competitive response to the data feed changes introduced by these two competitors. The Proposal also promotes competition by providing investors with an additional option for receiving consolidated EOD security data.

Moreover, as explained above, the Proposal will enhance investor understanding of the proprietary data distributed by the Exchange by providing a benchmark against which to compare such changes.

Competition with other exchanges in the sale of top-of-book products, coupled with potential competition from vendors in the distribution of proprietary and consolidated data feeds, and the likelihood that the Proposal will enhance investor understanding of securities markets and promote consumer choice, all provide a substantial basis for finding that the Proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and protects investors and the public interest.

The Proposal is not unfairly discriminatory. As noted previously, the NLS Plus data feed was found to be non-discriminatory and otherwise consistent with the Act in 2015.[27] The only change here is to enhance the EOD summary message with data on the open, high, low and closing price of a security published by the SIPs. As explained above, the proposed change to the EOD summary message is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants, and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other. The proposed EOD summary message will be available to all NLS Plus purchasers, without differentiation of any kind, and is therefore not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The Proposal, which adds the high, low, opening and closing price of a security as published by the SIPs to the NLS Plus EOD message, will place no burden on intermarket competition (the competition among SROs). As explained above, NLS Plus already competes directly against the NYSE BQT feed and the Cboe One Summary Feed, and is subject to potential competition from market data vendors. In the particular context of distributing the proposed EOD message, the Exchange is in direct competition with any vendor of SIP information, and any vendor not currently distributing SIP data would be able to do so by obtaining such information from the SIPs and adding that information to their market data products. Rather than place a burden

[21] *See* Securities Exchange Act Release No. 75257 (June 22, 2015), 80 FR 36862, 36864 (June 26, 2015) (SR–Nasdaq–2015–055) (''NLS Plus Approval Order'') *see also* Securities Exchange Act Release No. 75709 (August 14, 2015), 80 FR 50671 (August 20, 2015) (SR–BX–2015–047) (adding NLS Plus to the BX rulebook).

[22] *See* NLS Plus Approval Order, 80 FR 36862 at 36863. (''In addition to last sale information, NLS Plus also disseminates the following data elements: Trade Price, Trade Size, Sale Condition Modifiers, Cumulative Consolidated Market Volume, End of Day Trade Summary, Adjusted Closing Price, IPO Information, and Bloomberg ID (together the 'data elements'). NLS Plus also features and disseminates the following messages: Market Wide Circuit Breaker, Reg SHO Short Sale Price Test Restricted Indicator, Trading Action, Symbol Directory, Adjusted Closing Price, and End of Day Trade Summary (together the 'messages').'').

[23] *See id.* at 36863. (''Consolidated volume reflects the consolidated volume at the time that the NLS Plus trade message is generated, and includes the volume for the issue symbol as reported on the consolidated market data feed. The consolidated volume is based on the real-time trades reported via the UTP Trade Data Feed ('UTDF') and delayed trades reported via CTA. NASDAQ OMX calculates the real-time trading volume for its trading venues, and then adds the real-time trading volume for the other (non-NASDAQ OMX) trading venues as reported via the UTDF data feed. For non-NASDAQ-listed issues, the consolidated volume is based on trades reported via SIAC's Consolidated Tape System ('CTS') for the issue symbol. The Exchange calculates the real-time trading volume for its trading venues, and then adds the 15-minute delayed trading volume for the other (non-NASDAQ OMX) trading venues as reported via the CTS data feed.'').

[24] *See* Securities Exchange Act Release No. 87803 (December 19, 2019), 84 FR 71505 (December 27, 2019) (SR–NYSE–2019–70) (explaining that the NYSE BQT market data product competes ''head to head with the Nasdaq Basic and Cboe One Feed market data products.'').

[25] *See https://markets.cboe.com/us/equities/market_data_services/#:~:text=Cboe%20Top%20is%20a%20real,time%20on%20a%20Cboe%20book.&text=It%20is%20a%20real%2Dtime,time%20on%20a%20Cboe%20book.* We note that Cboe recently proposed a fee reduction for top-of-book data as well. *See* Securities Exchange Act Release No. 86670 (August 14, 2019), 84 FR 43207 (August 20, 2019) (SR–CboeBYX–2019–012).

[26] *See* Securities Exchange Act Release No. 89083 (June 17, 2020), 85 FR 37706 (June 23, 2020) (SR–CboeEDGX–2020–029) (amending the content of the Cboe One Feed to identify the primary listing market's official opening and closing price, effective July 10, 2020); NYSE Best Quote and Trades Client Specification, Version 2.3a (March 30, 2020), available at *https://www.nyse.com/publicdocs/nyse/data/NYSE_BQT_Client_Specification_v2.3a.pdf* (updated on January 31, 2020, to publish the listing market official opening and closing price in the Consolidated Stock Summary Messages).

[27] *See* Securities Exchange Act Release No. 75257 (June 22, 2015), 80 FR 36862, 36864 (June 26, 2015) (SR–Nasdaq–2015–055) (''NLS Plus Approval Order'').

competition, the Proposal will enhance competition by providing consumers with greater choice through an alternative EOD summary not currently offered by NYSE or Cboe.

Intramarket Competition

The Proposal will not cause any unnecessary or inappropriate burden on intramarket competition (competition among exchange customers). As explained above, the Proposal is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants, and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other. As such, the Proposal does not place any category of market participant at a relative disadvantage compared to any other market participant, and therefore will not impose any burden on competition not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [28] and Rule 19b–4(f)(6) thereunder.[29]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2021–008 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–BX–2021–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2021–008 and should be submitted on or before April 28, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

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[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91455; File No. SR–CboeBZX–2021–022]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 19.6 (Series of Options Contracts Open for Trading) in Connection With Limiting the Number of Strikes Listed for Short Term Option Series Which Are Available for Quoting and Trading on the Exchange

April 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2021, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX Options'') proposes to amend Rule 19.6 (Series of Options Contracts Open for Trading) in connection with limiting the number of strikes listed for Short Term Option Series which are available for quoting and trading on the Exchange. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 19.6 (Series of Options Contracts Open for Trading). Specifically, this proposal seeks to widen the intervals between strikes in order to limit the number of strikes listed for multiply listed equity options classes (excluding options on Exchange-Traded Funds (''ETFs'') and Exchange-Traded Notes (''ETNs'')) within the Short Term Option Series program that have an expiration date more than 21 days from the listing date.

Background

Current Rule 19.6 permits the Exchange, after a particular class of options has been approved for listing and trading on the Exchange, to open for trading series of options therein. The Exchange may list series of options for trading on a weekly,[5] monthly[6] or quarterly[7] basis. Rule 19.6.01 sets forth the intervals between strike prices of series of options on individual stocks generally,[8] and Rule 19.6.05(e) specifically sets forth intervals between strike prices on Short Term Option Series. Additionally, the Exchange may list series of options pursuant to the $1 Strike Price Interval Program,[9] the $0.50 Strike Program,[10] the $2.50 Strike Price Program,[11] and the $5 Strike Program.[12]

The Exchange's proposal seeks to amend the listing of weekly series of options (*i.e.* Short Term Option Series) by adopting new Rule 19.6.05(f),[13] which widens the permissible intervals between strikes, thereby limiting the number of strikes listed, for multiply listed equity options (excluding options on ETFs[14] and ETNs[15]) that have an

[5] The weekly listing program is known as the Short Term Option Series Program and is described within Rule 19.6.05.

[6] The Exchange will open at least one expiration month for each class of options open for trading on the Exchange. *See* Rule 19.6(e). The monthly expirations are subject to certain listing criteria for underlying securities described within Rule 19.3. Monthly listings expire the third Friday of the month. The term ''expiration date'' when used in respect of a series of binary options other than event options means the last day on which the options may be automatically exercised. In the case of a series of event options (other than credit default options or credit default basket options) that are be automatically exercised prior to their expiration date upon receipt by the Corporation of an event confirmation, the expiration date is the date specified by the listing Exchange; provided, however, that when an event confirmation is deemed to have been received by the Corporation with respect to such series of options, the expiration date will be accelerated to the date on which such event confirmation is deemed to have been received by the Corporation or such later date as the Corporation may specify. In the case of a series of credit default options or credit default basket options, the expiration date is the fourth business day after the last trading day for such series as such trading day is specified by the Exchange on which the series of options is listed; provided, however, that when an event confirmation is deemed to have been received by the Corporation with respect to a series of credit default options or single payout credit default basket options prior to the last trading day for such series, the expiration date for options of that series will be accelerated to the second business day following the day on which such event confirmation is deemed to have been received by the Corporation. ''Expiration date'' means, in respect of a series of range options expiring prior to February 1, 2015, the Saturday immediately following the third Friday of the expiration month of such series, and, in respect of a series of range options expiring on or after February 1, 2015 means the third Friday of the expiration month of such series, or if such Friday is a day on which the Exchange on which such series is listed is not open for business, the preceding day on which such Exchange is open for business. *See* The Options Clearing Corporation (''OCC'') By-Laws at Section 1.

[7] The quarterly listing program is known as the Quarterly Options Series Program and is described within Rule 19.6.04.

[8] The interval between strike prices of series of options on individual stocks may be $2.50 or greater where the strike price is $25 or less, provided however, that BZX Options may not list $2.50 intervals below $50 (*e.g.* $12.50, $17.50) for any class included within the $1 Strike Price Program, as detailed below in Interpretations and Policy .02, if the addition of $2.50 intervals would cause the class to have strike price intervals that are $0.50 apart. For series of options on 283 Exchange-Traded Fund Shares that satisfy the criteria set forth in Rule 19.3(i), the interval of strike prices may be $1 or greater where the strike price is $200 or less or $5 or greater where the strike price is over $200. Exceptions to the strike price intervals above are set forth in Interpretations and Policies .02 and .03. *See* Rule 19.6.01.

[9] The $1 Strike Interval Program is described within Rule 19.6.02.

[10] The $0.50 Strike Program is described within Rule 19.6.06.

[11] The $2.50 Strike Price Program is described within Rule 19.6.03.

[12] The $5 Strike Program is described within Rule 19.6(d)(5).

[13] As a result, the proposed rule change subsequently updates current Rule 19.6.05(f) and (g) to (g) and (h), respectively.

[14] The term ''ETF'' (Exchange-Traded Fund) (or ''Fund Shares'') has the same meaning as the term ''exchange-traded fund'' as defined in Rule 6c–11 under the Investment Company Act of 1940. *See* Rule 14.211(1)(3); *see also* Rule 19.3(i). Securities deemed appropriate for options trading shall include shares or other securities (''Fund Shares''), including but not limited to Partnership Units as defined in this Rule, that are principally traded on a national securities exchange and are defined as an ''NMS stock'' under Rule 600 of Regulation NMS, and that (1) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities, and that hold portfolios of securities comprising or otherwise based on or representing investments in indexes or portfolios of securities (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities) (''Funds '') and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the ''Financial Instruments''), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the ''Money Market Instruments'') constituting or otherwise based on or representing an investment in an index or portfolio of securities and/or Financial Instruments and Money Market Instruments, or (2) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (''Commodity Pool ETFs'') or (3) represent interests in a trust or similar entity that holds a specified non-U.S. currency or currencies deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust (''Currency Trust Shares''), or (4) represent interests in the SPDR Gold Trust or are issued by the iShares COMEX Gold Trust or iShares Silver Trust.

[15] Securities deemed appropriate for options trading shall include shares or other securities (''Equity Index-Linked Securities,'' ''Commodity-Linked Securities,'' ''Currency-Linked Securities,'' ''Fixed Income Index-Linked Securities,'' ''Futures-Linked Securities,'' and ''Multifactor Index-Linked Securities,'' collectively known as ''Index-Linked Securities'') (or ''ETNs'') that are principally traded on a national securities exchange and an ''NMS Stock'' (as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934), and represent ownership of a security that provides for the payment at maturity. Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities (''Equity Reference Asset''); Commodity-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more physical commodities or commodity futures, options on commodities, or other commodity derivatives or Commodity-Based Trust Shares or a basket or index of any of the foregoing (''Commodity Reference Asset''); Currency-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options on currencies or currency futures or other currency derivatives or Currency Trust Shares (as defined in

expiration date more than 21 days from the listing date. This proposal does not amend the monthly or quarterly listing rules, nor does it amend the $1 Strike Price Interval Program, the $0.50 Strike Program, the $2.50 Strike Price Program, or the $5 Strike Program.

Short Term Option Series Program

After an option class has been approved for listing and trading on the Exchange,[16] Rule 19.6.05 permits the Exchange to open for trading on any Thursday or Friday that is a business day (''Short Term Option Opening Date'') series of options on that class that expire at the close of business on each of the next five Fridays that are business days and are not Fridays on which monthly options series or Quarterly Options Series expire (''Short Term Option Expiration Dates''). The Exchange may select up to fifty currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date. In addition to the fifty option class restriction, the Exchange may also list Short Term Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules. For each option class eligible for participation in the Short Term Option Series Program, the Exchange may open up to 30 Short Term Option Series for each expiration date in that class. The Exchange may also open Short Term Option Series that are opened by other securities exchanges in option classes selected by such exchanges under their respective short term option rules.[17] Pursuant to Rule 19.6.05(c), the Exchange may open up to 30 initial series for each option class that participates in the Short Term Option Series Program and, pursuant to Rule 19.6.05(d), if the Exchange opens less than 30 Short Term Option Series for a Short Term Option Expiration Date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. Rule 19.6(e) provides that, if the class does not trade in $1 strike price intervals, the strike price interval for Short Term Option Series may be: (i) $0.50 or greater where the strike price is less than $75; (ii) $1.00 or greater where the strike price is between $75 and $150; or (iii) $2.50 or greater for strike prices greater than $150.[18]

The Exchange notes that listings in the weekly program comprise a significant part of the standard listing in options markets and that the industry has observed a notable increase over approximately the last five years in compound annual growth rate (''CAGR'') of weekly strikes as compared to CAGR for standard third-Friday expirations.[19]

Proposal

The Exchange proposes to widen the intervals between strikes in order to limit the number of strikes listed for equity options (excluding options on ETFs and ETNs) listed as part of the Short Term Option Series Program that have an expiration date more than 21 days from the listing date, by adopting proposed Rule 19.6.05(f). The Exchange notes that this proposal is substantively identical to the strike interval proposal recently submitted by Nasdaq BX, Inc. (''BX'') and approved by the Securities and Exchange Commission (''Commission'').[20]

The proposal widens intervals between strikes for expiration dates of equity option series (excluding options on ETFs and ETNs) beyond 21 days utilizing the three-tiered table in proposed Rule 19.6.05(f) (presented below) which considers both the Share Price and Average Daily Volume for the option series. The table indicates the applicable strike intervals and supersedes Rule 19.6.05(d), which currently permits 10 additional series to be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. As a result of the proposal, 19.6.05(d) would not permit an additional series of an equity option to have an expiration date more than 21 days from the listing date to be opened for trading on the Exchange despite the noted circumstances in paragraph (d) when such additional series may otherwise be added.

this Rule), or a basket or index of any of the foregoing (''Currency Reference Asset''); Fixed Income Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (''Treasury Securities''), government-sponsored entity securities (''GSE Securities''), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof or a basket or index of any of the foregoing (''Fixed Income Reference Asset''); Futures-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an index of (i) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (ii) interest rate futures or options or derivatives on the foregoing in this subparagraph (ii) (''Futures Reference Asset''); and Multifactor Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, or Futures Reference Assets (''Multifactor Reference Asset''). *See* 19.3(l).

[16] The Exchange may have no more than a total of five Short Term Option Expiration Dates, not including any Monday or Wednesday SPY Expirations as provided in paragraph (g). If BZX Options is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if BZX Options is not open for business on the Friday that the options are set to expire, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday. *See* Rule 19.6.05. The Exchange may open for trading on any Friday or Monday that is a business day series of options on the SPDR S&P 500 ETF Trust (''SPY'') to expire on any Monday of the month that is a business day and is not a Monday on which Quarterly Options Series expire (''Monday SPY Expirations''), provided that any Friday on which the Exchange opens for trading a Monday SPY Expiration is one business week and one business day prior to expiration. The Exchange may also open for trading on any Tuesday or Wednesday that is a business day series of SPY options to expire on any Wednesday of the month that is a business day and is not a Wednesday on which Quarterly Options Series expire (''Wednesday SPY Expirations''). The Exchange may list up to five consecutive Monday SPY Expirations and up to five consecutive Wednesday SPY Expirations at one time; the Exchange may have no more than a total of five Monday SPY Expirations and no more than a total of five Wednesday SPY Expirations. Monday and Wednesday SPY Expirations will be subject to the provisions of this Rule. See Rule 19.6.05(g). With the exception of Monday and Wednesday SPY Expirations, no Short Term Option Series may expire in the same week in which monthly option series on the same class expire or, in the case of Quarterly Options Series, on an expiration that coincides with an expiration of Quarterly Options Series on the same class. *See* Rule 19.6.05(b).

[17] *See* Rule 19.6.05(a).

[18] Additionally, Rule 19.6.05(e) provides that the interval between strike prices on Short Term Option Series shall be the same as the strike prices for series in that same option class that expire in accordance with the normal monthly expiration cycle. During the expiration week of an option class that is selected for the Short Term Option Series Program pursuant to this rule (''Short Term Option''), the strike price intervals for the related non-Short Term Option (''Related non-Short Term Option'') shall be the same as the strike price intervals for the Short Term Option.

[19] *See* Securities Exchange Act Release No. 91125 (February 12, 2021), 86 FR 10375 (February 19, 2021) (SR–BX–2020–032) (''BX Strike Interval Approval Order''); *and* SR–2020–BX–032 as amended by Amendment No. 1 (February 10, 2021) available at: *https://www.sec.gov/comments/sr-bx-2020-032/srbx2020032-8359799-229182.pdf* (''BX proposal''); *see also* BX Options Strike Proliferation Proposal (February 25, 2021) available at: *https://www.nasdaq.com/solutions/bx-options-strike-proliferation-proposal*).

[20] *See* BX Strike Interval Approval Order, *id.*

Tier	Average daily volume	Share price				
		Less than $25	$25 to less than $75	$75 to less than $150	$150 to less than $500	$500 or greater
1	Greater than 5,000	$0.50	$1.00	$1.00	$5.00	$5.00
2	Greater than 1,000 to 5,000[21]	1.00	1.00	1.00	5.00	10.00
3	0 to 1,000	2.50	5.00	5.00	5.00	10.00

Proposed Rule 19.6.05(f)(1) provides that the Share Price is the closing price on the primary market on the last day of the calendar quarter. This value is used to derive the column from which to apply strike intervals throughout the next calendar quarter. Also, proposed Rule 19.6.05(f)(1) provides that in the event of a corporate action, the Share Price of the surviving company is utilized.[22] Proposed Rule19.6.05(f)(2) provides that the Average Daily Volume is the total number of option contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter. Beginning on the second trading day in the first month of each calendar quarter, the Average Daily Volume is calculated by utilizing data from the prior calendar quarter based on Customer-cleared volume at OCC. For options listed on the first trading day of a given calendar quarter, the Average Daily Volume is calculated using the calendar quarter prior to the last trading calendar quarter.[23] Pursuant to current Rule 19.6.05, if the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday.

By way of example, if the Share Price for a symbol was $142 at the end of a calendar quarter, with an Average Daily Volume greater than 5,000, thereby, requiring strike intervals to be listed $1.00 apart, that strike interval would apply for the calendar quarter, regardless of whether the Share Price changed to $150 or greater during that calendar quarter.[24] The proposed table within Rule 19.6.05(f) takes into account the notional value of a security, as well as Average Daily Volume in the underlying stock, in order to widen the intervals between strikes and thereby limit the number of strikes listed for equity options (excluding options on ETFs and ETNs) in the Short Term Option Series listing program. The Exchange will utilize OCC Customer-cleared volume, as customer volume is an appropriate proxy for demand. The OCC Customer-cleared volume represents the majority of options volume executed on the Exchange, which, in turn, reflects the demand in the marketplace. The options series listed on the Exchange are intended to meet customer demand by offering an appropriate number of strikes. Non-Customer cleared OCC volume generally represents the supply side.

The proposal is intended to remove repetitive and unnecessary strike listings across the weekly expiries. Specifically, the proposal seeks to reduce the number of strikes listed in the furthest weeklies, which generally have wider markets and therefore lower market quality.[25] The proposed strike intervals are intended to widen permissible strike intervals in multiply listed equity options (excluding options on ETFs and ETNs) where there is less volume as measured by the Average Daily Volume tiers. Therefore, the lower the Average Daily Volume, the greater the proposed spread between strike intervals. Options classes with higher volume contain the most liquid symbols and strikes, which the Exchange believes makes the finer proposed spread between strike intervals for those symbols appropriate. Additionally, lower-priced shares have finer strike intervals than higher-priced shares when comparing the proposed spread between strike intervals. Today, weeklies are available on 16% of underlying products. The proposal limits the density of strikes listed in series of options, without reducing the classes of options available for trading on the Exchange. Short Term Option Series with an expiration date greater than 21 days from the listing date currently equate to 7.5% of the total number of strikes in the options market, which equals 81,000 strikes.[26] The Exchange expects this proposal to result in the limitation of approximately 20,000 strikes within the Short Term Option Series, which is approximately 2% of the total strikes in the options markets.[27] The Exchange understands there has been an inconsistency of demand for series of options beyond 21 calendar days.[28] The proposal takes into account customer demand for certain options classes, by considering both the Share Price and the Average Daily Volume, in order to remove certain strike intervals where there exist clusters of strikes whose characteristics closely resemble one another and, therefore, do not serve different trading needs,[29] rendering these strikes less useful. The Exchange also notes that the proposal focuses on strikes in multiply listed equity options, and excludes ETFs and ETNs, as the majority of strikes reside within equity options.

Additionally, proposed Rule 19.6.05(f)(3) provides that options that are newly eligible for listing pursuant to

[21] The Exchange notes that while the term ''greater than'' is not present in this cell in the corresponding BX rule, the Exchange has inserted it for clarity, otherwise an Average Daily Volume of 1,000 contracts could be read to fall into two categories.

[22] The Exchange notes that corporate actions resulting in change ownership would result in a surviving company, such as a merger of two publicly listed companies, and the Share Price of the surviving company would be used to determine strike intervals pursuant to the proposed table. Corporate actions that do not result in a change of ownership, such as stock-splits or distribution of special cash dividends, would not result in a ''surviving company'', therefore would not impact which Share Price to apply pursuant to the proposed Rule.

[23] For example, options listed as of April 1, 2021 would be calculated on April 2, 2021 using the Average Daily Volume from October 1, 2020 to December 31, 2020.

[24] The Exchange notes that any strike intervals imposed by the Exchange's Rules will continue to apply. In this example, the strikes would be in $1 intervals up to (but not including) $150, which is the upper limit imposed by Rule 19.6.05(e).

[25] *See* BX proposal, *supra* note 19, which presents tables that focus on data for 10 of the most and least actively traded symbols and demonstrate average spreads in weekly options during the month of August 2020.

[26] The Exchange notes that this proposal is an initial attempt at reducing strikes and anticipates filing additional proposals to continue reducing strikes. The percentage of underlying products and percentage of and total number of strikes, are approximations and may vary slightly at the time of this filing. The Exchange intends to decrease the overall number of strikes listed on the Cboe Cboe-affiliated options exchanges in a methodical fashion, so that it may monitor progress and feedback from its Members. The Exchange also notes that its affiliated options exchanges, Cboe Exchange, Inc. (''Cboe Options''), Cboe C2 Exchange, Inc. (''C2'') [sic], and Cboe EDGX Exchange, Inc. (''EDGX Options'') plan to submit identical proposals.

[27] From information drawn from time period between January 2020 and May 2020. *See* BX proposal, *supra* note 19.

[28] *See* BX proposal, *supra* note 19.

[29] For example, two strikes that are densely clustered may have the same risk properties and may also be the same percentage out-of-the money.

Rule 19.3 and designated to participate in the Short Term Option Series program pursuant to Rule 19.6.05(f) will not be subject to subparagraph (f) (as proposed) until after the end of the first full calendar quarter following the date the option class was first listed for trading on any options market.[30] As proposed, the Exchange is permitted to list options on newly eligible listings, without having to apply the wider strike intervals, until the end of the first full calendar quarter after such options were listed. The proposal thereby permits the Exchange to add strikes to meet customer demand in a newly listed options class. A newly eligible option class may fluctuate in price after its initial listing; such volatility reflects a natural uncertainty about the security. By deferring the application of the proposed wider strike intervals until after the end of the first full calendar quarter, additional information on the underlying security will be available to market participants and public investors, as the price of the underlying has an opportunity to settle based on the price discovery that has occurred in the primary market during this deferment period. Also, the Exchange has the ability to list as many strikes as are permissible for the Short Term Option Series once the expiry is no more than 21 days. Short Term Option Series that have an expiration date no more than 21 days from the listing date are not subject to the proposed strike intervals, which allows the Exchange to list additional, and potentially narrower, strikes in the event of market volatility or other market events. These metrics are intended to align expectations for determining which strike intervals will be utilized. Finally, proposed Rule 19.6.05(f)(4) provides that, notwithstanding the strike intervals imposed in proposed subparagraph (f), the proposal does not amend the range of strikes that may be listed pursuant to subparagraph (e).

While the current listing rules permit the Exchange to list a number of weekly strikes on its market, in an effort to encourage Market Makers to deploy capital more efficiently, as well as improve displayed market quality, the proposal aims to reduce the density of strikes listed in later weeks by widening the intervals between strikes listed for equity options (excluding options on ETFs and ETNs) which have an expiration date more than 21 days from the listing date. The Exchange requires Market Makers to quote during a certain amount of time in the trading day and in a certain percentage of series in their assigned options classes to maintain liquidity in the market.[31] With an increasing number of strikes being listed across options exchanges, Market Makers must expend their capital to ensure that they have the appropriate infrastructure to meet their quoting obligations on all options markets in which they are assigned in option classes. The Exchange believes that by widening the intervals between strikes listed for equity options (excluding options on ETFs and ETNs), thus reducing the number of strikes listed on the Exchange, the proposal will likewise reduce the number of weekly strikes in which Market Makers are required to quote and, as a result, allow Market Makers to expend their capital in the options market in a more efficient manner. Due to this increased efficiency, the Exchange believes that the proposal may improve overall market quality on the Exchange by widening the intervals between strikes in multiply listed equity options (excluding options on ETFs and ETNs) that have an expiration date more than 21 days from the listing date. The proposal is intended to balance the goal of limiting the number of listed strikes with the needs of market participants. The Exchange believes that the various permissible strike intervals will continue to offer market participants the ability to select the appropriate strikes to meet their investment objectives.

Implementation

The Exchange, along with BX and other options exchanges that intend to submit the same strike interval proposal, intends to begin implementation of the proposed rule change prior to June 30, 2021. The Exchange will issue a notice of the planned implementation date to it Members in advance. Once implemented, the Exchange will provide notice[32] to its Members of the Short Term Option Series eligible in a new quarter to be listed pursuant to Rule 19.6.05(f).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[33] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[34] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[35] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposal seeks to widen the permissible intervals between strikes listed for equity options (excluding options on ETFs and ETNs) in order to limit the number of strikes listed in the Short Term Option Series program that have an expiration date more than 21 days. The proposal removes impediments to and perfects the mechanism of a free and open market and a national market system by encouraging Market Makers to deploy capital more efficiently, which may improve market quality overall on the Exchange, by widening the intervals between strikes when applying the strike interval table to multiply listed equity options (excluding options on ETFs and ETPs) that have an expiration date more than 21 days from the listing date. As described above, the Exchange requires Market Makers to quote during a certain amount of time in the trading day and in a certain percentage of series in their assigned options classes to maintain liquidity in the market.[36] With an increasing number of strikes due, in part, to tighter intervals being listed across options exchanges, Market Makers must currently expend their capital to ensure that they have the appropriate infrastructure to meet their quoting obligations on all options markets in which they are assigned in

[30] For example, if an options class became newly eligible for listing pursuant to Rule 19.3 on March 1, 2021 (and was actually listed for trading that day), the first full quarterly lookback would be available on July 1, 2021. This option would become subject to the proposed strike intervals on July 2, 2021.

[31] *See* Rule 22.6(d).

[32] In its notices disseminated to Members regarding the Short Term Option Series eligible in a new quarter to be listed pursuant to Rule 19.6.05(f), the Exchange will include for each eligible option class: The closing price of the underlying; the Average Daily Volume of the option class; and the eligible strike category (per the proposed table) in which the eligible option class falls under as a result of the closing price and Average Daily Volume.

[33] 15 U.S.C. 78f(b).

[34] 15 U.S.C. 78f(b)(5).

[35] *Id.*

[36] *See supra* note 31.

options classes. The Exchange believes that this proposal will widen the intervals between strikes listed on the Exchange, thereby reducing the number of weekly options listed on its market in later weeks in which Market Makers are required to quote and, in turn, allowing Market Makers to expend their capital in the options market in a more efficient manner.

The Exchange believes that limiting the permissible strikes for multiply listed equity options (excluding options on ETFs and ETNs) that have an expiration date more than 21 days from the listing date will not significantly disrupt the market, as the majority of the volume traded in weekly options exists in options series which have an expiration date of 21 days or less. The proposal will limit the number of strikes listed in series of options without reducing the number of classes of options available for trading on the Exchange. The proposal allows the Exchange to determine the weekly strike intervals for multiply listed equity Short Term Option Series listed in the later weeks by taking into account customer demand for certain options classes by considering both the Share Price and the Average Daily Volume in the underlying security. The Exchange utilizes OCC Customer-cleared volume, as customer volume is an appropriate proxy for demand. Whereas non-Customer cleared OCC volume generally represents the supply side, the Exchange believes OCC Customer-cleared volume represents the majority of options volume executed on the Exchange, which, in turn, reflects the demands in the marketplace and is therefore intended to assist the Exchange in meeting customer demand by offering an appropriate number of strikes.

The proposal is intended to remove certain strikes where there exist clusters of strikes whose characteristics closely resemble one another and, therefore, do not serve different trading needs, which currently results in less useful strikes. As such, the proposal protects investors and the general public by removing unnecessary choices for an options series, which the Exchange believes may improve market quality. The proposal seeks to reduce the number of strikes in the furthest weeklies, which generally have wider markets, and, therefore, lower market quality. The implementation of the Strike Interval table is intended to allow for greater spreads between strike intervals in multiply listed equity options where there is less volume as measured by the Average Daily Volume tiers. Therefore, the lower the Average Daily Volume, the wider the proposed spread between strike intervals, and the higher the Average Daily Volume (*i.e.,* the options classes that contain the most liquid symbols and strikes), the narrower the proposed spread between strike intervals. Additionally, the proposed strike intervals are finer for lower-priced shares than higher-priced shares.[37] As a result, the Exchange believes that, by limiting the permissible strikes for multiply listed equity options (excluding options on ETFs and ETNs) that have an expiration date more than 21 days from the listing date pursuant to the proposed Strike Interval table, the proposal may improve overall market quality on the Exchange, which serves to protect investors and the general public.

Further, utilizing the second trading day of a calendar quarter allows the Exchange to accumulate data regarding OCC Customer-cleared volume from the entire prior calendar quarter and allows the calculation of Average Daily Volume to account for trades executed on the last day of the previous calendar quarter, which will have settled by the second trading day.[38] The Exchange believes that applying the previous calendar quarter for the calculation is appropriate to reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it may result in a more reliable measure of Average Daily Volume than a shorter period).

As stated, the proposal is substantively identical to the strike interval proposal recently submitted by BX and approved by the Commission.[39] The Exchange believes that varied strike intervals will continue to offer market participants the ability to select the appropriate strike interval to meet that market participants' investment objectives.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as the proposed rule change limits the number of Short Term Option Series strikes available for quoting and trading on the Exchange for all market participants. Therefore, all market participants will equally be able to transact in options series in the strikes listed for trading on the Exchange. The proposal is intended to reduce the number of strikes for weekly options listed in later weeks without reducing the number of classes of options available for trading on the Exchange while also continuing to offer an appropriate number of strikes the Exchange believes will meet market participants' investment objectives.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as it only impacts the permissible strike intervals for certain options series listed on the Exchange. Additionally, another options exchange has recently implemented a substantively identical rule for listing Short Term Option Series strike intervals on its exchange, approved by the Commission.[40] The proposal is a competitive response that will permit the Exchange to list the same series in multiply listed options as another options exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[41] and Rule 19b–4(f)(6) thereunder.[42]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

[37] The Exchange notes that is has discussed the proposed strike intervals with various Members.

[38] Options contracts settle one business day after trade date. Strike listing determinations are made the day prior to the start of trading in each series.

[39] *See* BX Strike Interval Approval Order, *supra* note 19.

[40] *See* BX Strike Interval Approval Order, *supra* note 19.

[41] 15 U.S.C. 78s(b)(3)(A).

[42] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2021–022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2021–022. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the 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 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CboeBZX–2021–022 and should be submitted on or before April 28, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07116 Filed 4–6–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91459; File No. SR–Phlx–2021–17]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Enhance the End of Day Summary Message on Nasdaq Last Sale Plus

April 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2021, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to enhance the End of Day (''EOD'') summary message on Nasdaq Last Sale (''NLS'') Plus by replacing the current high, low and closing price of a security based on its trading on Phlx, The Nasdaq Stock Market, LLC (''Nasdaq''), and Nasdaq BX, Inc. (''BX'' or ''Nasdaq BX'') with the high, low and closing price of a security published by the securities information processors (''SIPs''), and adding the opening price of a security as published by the SIPs to that message. This is a companion filing that will modify the definition of NLS Plus contained in the Nasdaq Phlx Rulebook to conform to the definitions provided in the Nasdaq and Nasdaq BX rulebooks.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to enhance the EOD summary message on NLS Plus by replacing the current high, low and closing price of a security based on its trading on the Phlx, Nasdaq, and Nasdaq BX exchanges with the consolidated high, low and closing price as published by the SIPs, and adding the opening price of a security published by the SIPs to that message.[3] The proposed changes to NLS Plus were filed by Nasdaq on February 17, 2021, and published in the **Federal Register** on March 8, 2021.[4] Nasdaq BX will be submitting a similar filing concurrently with this filing. The purpose of this filing is to modify the definition of NLS Plus in the Nasdaq Phlx Rulebook to conform to the definitions provided in the Nasdaq and Nasdaq BX rulebooks.

Nasdaq's proposal to enhance the EOD summary message on NLS Plus was in response to requests by firms using NLS Plus for a broader benchmark against which to compare trades on the Nasdaq exchanges. Specifically, approximately 30 firms have requested that Nasdaq distribute benchmark prices on NLS Plus to provide retail investors and the general investing public with a static benchmark against which to compare the price movements shown on NLS Plus using standard high, low,

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[43] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The securities information processors issue consolidated trade information pursuant to the UTP Plan and the CTA/CQ Plan.

[4] *See* Securities Exchange Act Release No. 91241 (March 2, 2021), 86 FR 13427 (March 8, 2021) (SR–Nasdaq–2021–010).

opening and closing prices for U.S. markets as a whole. In response to that feedback, and also partly in response to recent changes by competitor exchanges to their end of day messages,[5] the Exchange proposes to enhance its EOD message for NLS Plus—which currently provides the high, low and closing price of a security based on its trading on Nasdaq affiliates—with a new EOD message that provides the high, low and closing price published by the SIPs, and add a new field with the opening price of a security as published by the SIPs.[6]

The Exchange proposes that this change become operative on May 17, 2021, to allow time to conduct customer testing in advance of the date of launch.

Nasdaq Last Sale Plus

NLS Plus is a comprehensive data feed that offers retail investors, the general investing public, and other customers access to the last sale products offered by Phlx,[7] Nasdaq, and Nasdaq BX, and the consolidated volume information published on the SIPs for Tapes A, B, and C, in a convenient format that includes both real-time and end of day information.[8] It is, in essence, a market data vendor product that consolidates information from multiple Nasdaq exchanges and the SIPs. This product directly competes against similar products offered by other exchanges, and faces potential competition from data vendors, which can obtain and distribute SIP data on the same terms as Nasdaq.[9]

At the close of each trading day, Nasdaq disseminates an EOD summary message on NLS Plus that includes the following information for all active Nasdaq- and non-Nasdaq-listed securities:

- *Nasdaq Price High:* The highest price reported for a last sale transaction on any Nasdaq venue for the issue symbol during the current trading day.
- *Nasdaq Price Low:* The lowest price reported for a last sale transaction on any Nasdaq venue for the issue symbol during the current trading day.
- *Nasdaq Price Closing:* For Nasdaq-listed securities, this is the Nasdaq Official Closing Price value, if available. For non-Nasdaq-listed securities, it is the final last sale eligible transaction reported by any Nasdaq venue for the issue during normal market hours.
- *Consolidated Volume:* Reflects the total volume for the issue reported at the consolidated market level.[10]

Proposal

The Exchange proposes to enhance the current EOD summary message by providing the open, high, low, close and volume of a security based on the consolidated data provided by the UTP and CTA/CQ plans for Tape A, B[11] and C[12] securities. This will require replacing the current high, low, and close on the Nasdaq exchanges with the following three fields:

- *Consolidated Price High:* The highest price of any high/low eligible transaction on Tapes A, B or C received on the trading day.
- *Consolidated Price Low:* The lowest price of any high/low eligible transaction on Tapes A, B or C received on the trading day.
- *Consolidated Price Close:* The final last sale eligible transaction on Tapes A, B or C received on the trading day.[13]

It will also require adding the following new field to the EOD summary message:

- *Consolidated Price Open:* The first last sale eligible transaction received on the trading day for Tapes A, B or C.

The Consolidated Volume field will not change.

The above data will be available to users of the NLS Plus feed on a delayed basis, 15 minutes after the real-time dissemination of the above data points on the UTP and CTA/CQ data feeds for that day. The Exchange is not proposing any change to NLS Plus fees as a result of this modification.

Discussion

The NLS Plus data feed, designed for distribution to the investing public,[14] is purchased by broker-dealers for dissemination to retail investors in the context of the brokerage relationship and financial media websites for the general investing public, among others. Approximately 30 firms that purchase or may purchase NLS Plus have requested that Nasdaq modify the EOD summary information to help investors place trades on the Nasdaq exchanges in the context of U.S. markets as a whole, rather than just the Nasdaq exchanges. Specifically, these firms requested that Nasdaq use benchmark prices for the high, low, opening and closing price of a security as published by the securities information processors to help investors understand price movements on the Nasdaq exchanges.

This suggestion by Nasdaq's customers is comparable to changes in the end of day messages undertaken recently by two of Nasdaq's chief competitors, Cboe and NYSE, in their top-of-book data feeds. In 2020, both

[5] *See* Securities Exchange Act Release No. 89083 (June 17, 2020), 85 FR 37706 (June 23, 2020) (SR-CboeEDGX–2020–029) (amending the content of the Cboe One Feed to identify the primary listing market's official opening and closing price); NYSE Best Quote and Trades Client Specification (March 30, 2020) (updated on January 31, 2020, to publish the listing market official opening and closing price in the Consolidated Stock Summary Messages) available at *https://www.nyse.com/publicdocs/nyse/data/NYSE_BQT_Client_Specification_v2.3a.pdf.*

[6] The Proposal also clarifies the description of the information provided in NLS Plus. It removes an unnecessary sentence at the end of the description of NLS Plus stating that volume information reflects trading activity in Tape A and B Securities, and replaces it with an earlier reference to Tape A and B securities that provides the same information. It also separates the description of the end of day trade summary into two sentences for greater clarity: the first sentence lists the data provided by the Nasdaq equity exchanges, and the second sentence identifies the consolidated information obtained from Tapes A, B and C. The phrases ''as well as consolidated volume of,'' and ''Cumulative Consolidated Market Volume'' are deleted to remove repetitive language that might cause confusion. This filing also replaces an outdated reference to Nasdaq Rule 7032 in Section 3, Nasdaq PSX Fees, PSX Last Sale and Nasdaq Last Sale Plus Data Feeds (b)(4) with the correct citation to Equity 7, Section 132 of the Nasdaq Rulebook. *See* Securities Exchange Act Release No. 84684 (November 29, 2018), 83 FR 62936 (December 6, 2018) (SR–NASDAQ–2018–098).

[7] PSX Last Sale is comprised of two proprietary data feeds containing real-time last sale information for trades executed on the Exchange. ''PSX Last Sale for Nasdaq'' contains all such transaction reports for Nasdaq-listed stocks, and ''PSX Last Sale for NYSE/NYSE Amex'' contains all such transaction reports for NYSE-listed stocks and stocks listed on NYSE American and other Tape B listing venues. *See* Equity 7, Section 3, PSX Last Sale and Nasdaq Last Sale Plus Data feeds (a).

[8] The full list of NLS Plus components is as follows: Trade Price, Trade Size, Sale Condition Modifiers, Cumulative Consolidated Market Volume for Tape A, B, and C securities, End of Day Trade Summary, Adjusted Closing Price, IPO Information, Bloomberg ID, and pertinent regulatory Information (such as Market Wide Circuit Breaker, Reg SHO Short Sale Price Test Restricted Indicator, Trading Action, and Symbol Directory). *See* Equity 7, Section 3, PSX Last Sale and Nasdaq Last Sale Plus Data feeds (b).

[9] *See* Securities Exchange Act Release No. 75890 (September 10, 2015), 80 FR 55692 (September 16, 2015) (SR–Phlx–2015–76) (explaining that, in distributing NLS Plus, Nasdaq performs ''precisely the same functions as Bloomberg, Thomson Reuters, and dozens of other market data vendors; and the contents of the NLS Plus data stream are similar in nature to what is distributed by other exchanges.'').

[10] *See* NLS Plus Version 3.0 Technical Specifications, Section 5.8.5 (End of Day Trading Summary) at 29, available at *http://www.nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/NLSPlusSpecification3.0.pdf.*

[11] Tape A and Tape B securities are disseminated pursuant to the Security Industry Automation Corporation's (SIAC's) Consolidated Tape Association Plan/Consolidated Quotation System (''CTA/CQS'' or ''CTA'').

[12] Tape C securities are disseminated pursuant to the NASDAQ Unlisted Trading Privileges (''UTP'') Plan.

[13] If there are no trades or no qualifying trades for a specific issue, all relevant fields for the EOD summary message will be left blank.

[14] *See* Securities Exchange Act Release No. 75890 (September 10, 2015), 80 FR 55692 (September 16, 2015) (SR–Phlx–2015–76) (explaining that Nasdaq, in distributing NLS Plus, ''combines publicly available data from the three filed last sale products of the [Nasdaq] equity markets and from the network processors for the ease and convenience of market data users and vendors, and ultimately the investing public.'').

amended their end of day messages to identify the primary listing market's official opening and closing price after a 15-minute delay, which, similar to the proposal by Nasdaq's customers, establish an external benchmark against which to evaluate exchange data.[15]

In light of customer requests and changing industry standards, the Exchange has determined that the requested change to the EOD summary message is in the best interest of our customers. The end of day data published by the securities information processors provides useful information on the state of the U.S. market as a whole, and including it on the NLS Plus feed will enhance investor understanding of the proprietary data distributed by the Exchange.[16] The proposal will also provide consumers with greater choice by offering an alternative to other EOD summaries offered in the market. The Exchange therefore proposes to modify its EOD summary message to provide the Open, High, Low, Close and Volume of a security based on the consolidated data provided by the SIPs. This EOD message will be based on data obtained from the securities information processors, and will be distributed by Nasdaq as a vendor of SIP data, and will be subject to competition from all distributors of SIP data.

The proposed change to the EOD summary message is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants, and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other.[17]

The Exchange expects that the new EOD message will be attractive to potential customers, and, based on conversations with potential customers and our overall familiarity with the market, the Exchange expects between approximately 10 and 20 additional customers for NLS Plus as a result of the proposed change.[18]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In 2015, the Commission found the creation of the NLS Plus data feed to be ''consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. . . .'' [21] The NLS Plus Approval Order noted that NLS Plus disseminated an End of Day Trade Summary among other messages,[22] and consolidated volume information obtained from the UTP and CTA Plans.[23] As NLS Plus and the current end of day messages and volume information have already been shown to be consistent with Section 6(b) of the Act, this analysis therefore focuses on the consistency of the proposal to enhance the EOD summary message with data on the open, high, low and closing price of a security published by the SIPs.

NLS Plus competes with the substitute top-of-book proprietary data products offered by other exchanges, including the NYSE BQT feed, which disseminates top-of-book information from the NYSE, NYSE American, NYSE Arca, NYSE National, and NYSE Chicago exchanges,[24] and the Cboe One Summary Feed, which disseminates data from the BZX Exchange, BYX Exchange, EDGX Exchange and EDGA Exchange.[25] NLS Plus also competes with the offerings of data vendors that distribute the proprietary data feeds of Nasdaq and other exchanges. Of particular importance here, Nasdaq obtains data from the SIPs on the same terms as any data vendor, and Nasdaq has no latency, cost, or other advantage in the distribution of end of day SIP data as proposed herein. Retail customers are potentially able to obtain such information from any distributor of SIP data.

This Proposal reflects the competitive nature of these markets. As noted above, both NYSE and Cboe expanded their end of day summary messages in 2020 to identify the primary listing market's

[15] *See* Securities Exchange Act Release No. 89083 (June 17, 2020), 85 FR 37706 (June 23, 2020) (SR–CboeEDGX–2020–029) (amending the content of the Cboe One Feed to identify the primary listing market's official opening and closing price after a 15 minute delay, effective July 10, 2020); NYSE Best Quote and Trades Client Specification, Version 2.3a (March 30, 2020) available at *https://www.nyse.com/publicdocs/nyse/data/NYSE_BQT_Client_Specification_v2.3a.pdf* (updated on January 31, 2020, to publish the listing market official opening and closing price in the Consolidated Stock Summary Messages).

[16] Any customer that requires access to the high, low, and closing price of a security on the Nasdaq equity exchanges alone, and not the U.S. markets as a whole, would continue to have access to that information on the real-time NLS Plus data feed.

[17] Although this is not a fee filing, the Exchange is addressing this question to provide as complete as possible an evaluation of the proposed change. *See* Division of Trading and Markets, U.S. Securities and Exchange Commission, ''Staff Guidance on SRO Filings Related to Fees'' (May 21, 2019) (''Staff Guidance''), available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (indicating that the discussion of purpose should indicate ''whether the relevant product or service, including the corresponding proposed fee or fee change, is targeted at—or expected to be limited in its applicability to—a specific segment(s) of market participants (and if so, the related details))''.

[18] *See id.* (requesting that the discussion of purpose address ''the projected number of purchasers (including members, as well as non-members) of any new or modified product or service and the expected number of purchasers likely to be subject to a new fee or pricing tier, including members and non-members . . .'').

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *See* Securities Exchange Act Release No. 75257 (June 22, 2015), 80 FR 36862, 36864 (June 26, 2015) (SR–Nasdaq–2015–055) (''NLS Plus Approval Order''); *see also* Securities Exchange Act Release No. 75763 (August 26, 2015), 80 FR 52817 (September 1, 2015) (SR–Phlx–2015–72) (adding NLS Plus to the PSX Last Sale portion of the Phlx fee schedule).

[22] *See* NLS Plus Approval Order, 80 FR 36862 at 36863. (''In addition to last sale information, NLS Plus also disseminates the following data elements: Trade Price, Trade Size, Sale Condition Modifiers, Cumulative Consolidated Market Volume, End of Day Trade Summary, Adjusted Closing Price, IPO Information, and Bloomberg ID (together the 'data elements'). NLS Plus also features and disseminates the following messages: Market Wide Circuit Breaker, Reg SHO Short Sale Price Test Restricted Indicator, Trading Action, Symbol Directory, Adjusted Closing Price, and End of Day Trade Summary (together the ''messages'').'').

[23] *See id.* (''Consolidated volume reflects the consolidated volume at the time that the NLS Plus trade message is generated, and includes the volume for the issue symbol as reported on the consolidated market data feed. The consolidated volume is based on the real-time trades reported via the UTP Trade Data Feed ('UTDF') and delayed trades reported via CTA. NASDAQ OMX calculates the real-time trading volume for its trading venues, and then adds the real-time trading volume for the other (non-NASDAQ OMX) trading venues as reported via the UTDF data feed. For non-NASDAQ-listed issues, the consolidated volume is based on trades reported via SIAC's Consolidated Tape System ('CTS') for the issue symbol. The Exchange calculates the real-time trading volume for its trading venues, and then adds the 15-minute delayed trading volume for the other (non-NASDAQ OMX) trading venues as reported via the CTS data feed.'').

[24] *See* Securities Exchange Act Release No. 87803 (December 19, 2019), 84 FR 71505 (December 27, 2019) (SR–NYSE–2019–70) (explaining that the NYSE BQT market data product competes ''head to head with the Nasdaq Basic and Cboe One Feed market data products.'').

[25] *See https://markets.cboe.com/us/equities/market_data_services/#:~:text=Cboe%20Top%20is%20a%20real,time%20on%20a%20Cboe%20book.&text=It%20is%20a%20real%2Dtime,time%20on%20a%20Cboe%20book.* We note that Cboe recently proposed a fee reduction for top-of-book data as well. *See* Securities Exchange Act Release No. 86670 (August 14, 2019), 84 FR 43207 (August 20, 2019) (SR–CboeBYX–2019–012).

official opening and closing price after a 15-minute delay.[26] The Exchange's change to the EOD summary message is, in part, a competitive response to the data feed changes introduced by these two competitors. The Proposal also promotes competition by providing investors with an additional option for receiving consolidated EOD security data.

Moreover, as explained above, the Proposal will enhance investor understanding of the proprietary data distributed by the Exchange by providing a benchmark against which to compare such changes.

Competition with other exchanges in the sale of top-of-book products, coupled with potential competition from vendors in the distribution of proprietary and consolidated data feeds, and the likelihood that the Proposal will enhance investor understanding of securities markets and promote consumer choice, all provide a substantial basis for finding that the Proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and protects investors and the public interest.

The Proposal is not unfairly discriminatory. As noted previously, the NLS Plus data feed was found to be non-discriminatory and otherwise consistent with the Act in 2015.[27] The only change here is to enhance the EOD summary message with data on the open, high, low and closing price of a security published by the SIPs. As explained above, the proposed change to the EOD summary message is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants, and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other. The proposed EOD summary message will be available to all NLS Plus purchasers, without differentiation of any kind, and is therefore not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The Proposal, which adds the high, low, opening and closing price of a security as published by the SIPs to the NLS Plus EOD message, will place no burden on intermarket competition (the competition among SROs). As explained above, NLS Plus already competes directly against the NYSE BQT feed and the Cboe One Summary Feed, and is subject to potential competition from market data vendors. In the particular context of distributing the proposed EOD message, the Exchange is in direct competition with any vendor of SIP information, and any vendor not currently distributing SIP data would be able to do so by obtaining such information from the SIPs and adding that information to their market data products. Rather than place a burden competition, the Proposal will enhance competition by providing consumers with greater choice through an alternative EOD summary not currently offered by NYSE or Cboe.

Intramarket Competition

The Proposal will not cause any unnecessary or inappropriate burden on intramarket competition (competition among exchange customers). As explained above, the Proposal is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants, and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other. As such, the Proposal does not place any category of market participant at a relative disadvantage compared to any other market participant, and therefore will not impose any burden on competition not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[28] and Rule 19b–4(f)(6) thereunder.[29]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2021–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2021–17. 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

[26] *See* Securities Exchange Act Release No. 89083 (June 17, 2020), 85 FR 37706 (June 23, 2020) (SR–CboeEDGX–2020–029) (amending the content of the Cboe One Feed to identify the primary listing market's official opening and closing price, effective July 10, 2020); NYSE Best Quote and Trades Client Specification, Version 2.3a (March 30, 2020), available at *https://www.nyse.com/publicdocs/nyse/data/NYSE_BQT_Client_Specification_v2.3a.pdf* (updated on January 31, 2020, to publish the listing market official opening and closing price in the Consolidated Stock Summary Messages).

[27] *See* Securities Exchange Act Release No. 75257 (June 22, 2015), 80 FR 36862, 36864 (June 26, 2015) (SR–Nasdaq–2015–055) (''NLS Plus Approval Order'').

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2021–17 and should be submitted on or before April 28, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07120 Filed 4–6–21; 8:45 am]

BILLING CODE 8011–01–P

[30] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16915 and #16916; Kentucky Disaster Number KY–00083]

Presidential Declaration of a Major Disaster for Public Assistance Only for the Commonwealth of Kentucky

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Kentucky (FEMA–4592–DR), dated 03/31/2021.

Incident: Severe Winter Storms, Landslides, and Mudslides.

Incident Period: 02/08/2021 through 02/19/2021.

DATES: Issued on 03/31/2021.

Physical Loan Application Deadline Date: 05/31/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 01/03/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/31/2021, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bath, Boyd, Boyle, Breathitt, Carter, Casey, Clark, Clay, Clinton, Elliott, Estill, Fleming, Floyd, Garrard, Greenup, Harlan, Jefferson, Johnson, Laurel, Lawrence, Lee, Leslie, Lewis, Lincoln, Madison, Magoffin, Marion, Martin, McCreary, Menifee, Mercer, Montgomery, Morgan, Nelson, Nicholas, Owsley, Perry, Powell, Pulaski, Rockcastle, Rowan, Wayne, Whitley, Wolfe.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 16915 B and for economic injury is 16916 0.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–07100 Filed 4–6–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (''SBA'') will submit the following information to the Office of Management and Budget (''OMB'') for review and clearance in accordance with the Paperwork Reduction Act (''PRA''). We invite the general public and other Federal agencies to comment on the proposed and continuing information collections, which aids in assessing the impact of information collection requirements and minimizes the public's reporting burden. This notice allows for a 60-day public comment period.

DATES: Submit comments on or before June 7, 2021.

ADDRESSES: Send all comments to Gregorius Suryadi, Financial and Loan Specialist, Office of Financial Assistance, *Gregorius.suryadi@sba.gov,* Small Business Administration,

FOR FURTHER INFORMATION CONTACT: Gregorius Suryadi, Financial and Loan Specialist, Office of Financial Assistance, 202–205–6656, *gregorius.suryardi@sba.gov,* or Curtis B. Rich, Management Analyst, (202) 205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: On March 27, 2020, the Coronavirus Aid, Relief and Economic Security Act (the CARES Act), Public Law 116–136, was enacted to provide emergency and immediate national economic relief and assistance across the American economy, including to small businesses, workers, families, and the health-care system, to alleviate the severe economic hardships and public health threat created by the 2019 Novel Coronavirus pandemic. Section 1112 of the CARES Act, as set forth in Public Law 116–136, authorizes SBA to pay, for a 6-month period, the principal, interest, and associated fees (subsidy debt relief) to eligible borrowers in the 7(a), 504, and Microloan Programs. Under Section 325 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), enacted December 27, 2020, Public Law 116–260, Congress amended and extended the Section 1112 subsidy debt relief payments subject to the availability of funds appropriated by Congress.

The purpose of the Section 1112 Gross Loan Payment Template allows SBA to accurately make payments to the lender on behalf of the borrower.

Therefore, each SBA participating lender with an eligible loan(s) must submit a request to SBA for each eligible loan with the gross monthly payment due including accrued interest and associated fees due. SBA will reconcile those amounts and transmit the funds electronically to the lender on behalf of the borrower in accordance with the provisions set forth in the CARES Act and Economic Aid Act.

Solicitation of Public Comments

SBA is requesting comments on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Proposed Information Collection

OMB Control Number: 3245–0414.

Title: CARES Act Section 1112 Gross Loan Payment.

Description of Respondents: 7(a), 504, and Microloan Program Participants.

Total Estimated Annual Reponses: 48,000.

Total Estimated Annual Hour Burden: 12,000.

Curtis Rich,

Management Analyst.

[FR Doc. 2021–07096 Filed 4–6–21; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 11398]

Notice of Renewed Charter for the Title VIII Advisory Committee

ACTION: Notice of renewal.

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the Department of State renewed the Charter for the Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union (Title VIII Advisory Committee).

The Advisory Committee was established under the authority of 22 U.S.C. 4503 to provide advice and recommendations to the Secretary of State or his or her designated representative concerning implementation of the Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983, Public Law 98–164, as amended. The renewed charter was filed with Congress on March 26, 2021, per statute.

Sidni J. Dechaine,

Designated Federal Officer, Advisory Committee for the Program for the Study of Eastern Europe and the Independent States of the Former Soviet Union.

[FR Doc. 2021–07155 Filed 4–6–21; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF STATE

[Public Notice: 11396]

Notice of Department of State Sanctions Actions

ACTION: Notice.

SUMMARY: The Secretary of State has determined, pursuant to the Countering America's Adversaries Through Sanctions Act of 2017 (CAATSA), that the Turkish entity Presidency of Defense Industries (SSB), formerly known as the Undersecretariat for Defense Industries (SSM), has knowingly, on or after August 2, 2017, engaged in a significant transaction with a person that is part of, or operates for or on behalf of, the defense or intelligence sectors of the Government of the Russian Federation. The Secretary of State has also selected certain sanctions to be imposed upon SSB and Ismail Demir, SSB's president; Faruk Yigit, SSB's vice president; Serhat Gencoglu, SSB's Head of the Department of Air Defense and Space; and Mustafa Alper Deniz, Program Manager for SSB's Regional Air Defense Systems Directorate, pursuant to CAATSA.

DATES: The Secretary of State's determination that SSB has knowingly, on or after August 2, 2017, engaged in a significant transaction with a person that is part of, or operates for or on behalf of, the defense or intelligence sectors of the Government of the Russian Federation, and the Secretary of State's selection of certain sanctions to be imposed upon SSB and Ismail Demir, Faruk Yigit, Serhat Gencoglu, and Mustafa Alper Deniz are effective on December 14, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas W. Zarzecki, Director, Task Force 231, Bureau of International Security and Nonproliferation, Department of State, Washington, DC 20520, tel.: 202–647–7594, *ZarzeckiTW@STATE.GOV.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 231(a) of CAATSA and Executive Order 13849 the Secretary of State has selected the following sanctions to be imposed upon SSB:

- United States Government departments and agencies shall not issue any specific license or grant any other specific permission or authority under the Export Control Reform Act of 2018 (50 U.S.C. 4801 *et seq.*), the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), the Atomic Energy Act of 1954 (42 U.S.C. 2011 et set.), or any statute that requires the prior review or approval of the United States Government as a condition for the export or re-export of goods or technology to SSB;
- United States financial institutions shall be prohibited from making loans or providing credits to SSB totaling more than $10,000,000 in any 12-month period unless SSB is engaged in activities to relieve human suffering and the loans or credits are provided for such activities;
- The Export-Import Bank of the United States shall not give approval to the issuance of any guarantee, insurance, extension of credit, or participation in the extension of credit in connection with the export of any goods or services to SSB;
- The United States executive director to each international financial institution shall use the voice and vote of the United States to oppose any loan from the international financial institution that would benefit SSB; and
- Imposition on the principal executive officer or officers of SSB, or on persons performing similar functions and with similar authorities as such officer or officers, certain sanctions, as selected by the Secretary of State and described below.

The Secretary of State has selected the following sanctions to be imposed upon Ismail Demir, Faruk Yigit, Serhat Gencoglu, and Mustafa Alper Deniz, pursuant to CAATSA Section 235(a)(12):

- A prohibition on any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which Ismail Demir, Faruk Yigit, Serhat Gencoglu, or Mustafa Alper Deniz has any interest;
- A prohibition on any transfers of credit or payments between financial institutions, or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of Ismail Demir, Faruk Yigit, Serhat Gencoglu, or Mustafa Alper Deniz;
- All property and interests in property of Ismail Demir, Faruk Yigit, Serhat Gencoglu, or Mustafa Alper Deniz that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United

States person are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in; and

• The Secretary of State shall deny a visa to Ismail Demir, Faruk Yigit, Serhat Gencoglu, and Mustafa Alper Deniz, and the Secretary of Homeland Security shall exclude Ismail Demir, Faruk Yigit, Serhat Gencoglu, and Mustafa Alper Deniz from the United States, by treating Ismail Demir, Faruk Yigit, Serhat Gencoglu, and Mustafa Alper Deniz as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Ann K. Ganzer,

Deputy Assistant Secretary of State, Department of State.

[FR Doc. 2021–07048 Filed 4–5–21; 4:15 pm]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[DOT–OST–2021–XXXX]

Research, Engineering, and Development Advisory Committee (REDAC); Notice of Public Meeting

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Research, Engineering, and Development Advisory Committee (REDAC).

DATES: The meeting will be held on April 21, 2021, from 10:00 a.m.–5:00 p.m. EDT. Requests for accommodations to a disability must be received by April 10, 2021. Individuals requesting to speak during the meeting must submit a written copy of their remarks to DOT by April 10, 2021. Requests to submit written materials to be reviewed during the meeting must be received no later than April 10, 2021.

ADDRESSES: The meeting will be held virtually. Virtual attendance information will be provided upon registration. A detailed agenda will be available on the REDAC internet website at *http://www.faa.gov/go/redac* at least one week before the meeting, along with copies of the meeting minutes after the meeting.

FOR FURTHER INFORMATION CONTACT: Chinita Roundtree-Coleman, REDAC PM/Lead, FAA/U.S. Department of Transportation, at *chinita.roundtree-coleman@faa.gov* or (609) 569–3729. Any committee related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The Research, Engineering, and Development Advisory Committee was created under the Federal Advisory Committee Act (FACA), in accordance with Public Law 100–591 (1988) and Public Law 101–508 (1990) to provide advice and recommendations to the FAA Administrator in support of the Agency's Research and Development (R&D) portfolio.

II. Agenda

At the meeting, the agenda will cover the following topics:

• FAA Research and Development Strategies, Initiatives and Program Planning,

• Impacts of emerging technologies, new entrant vehicles and dynamic operations within the National Airspace System.

III. Public Participation

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

There will be 45 minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the FAA may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to REDAC members before the deadline listed in the **DATES** section. All prepared remarks submitted on time will be accepted and considered as part of the meeting's record. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, this 1st day of April 2021.

Chinita Roundtree-Coleman,

REDAC PM/Lead, Federal Aviation Administration.

[FR Doc. 2021–07095 Filed 4–6–21; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0191]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From Loomis Armored US, LLC

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA requests public comment on an application for exemption from Loomis Armored US, LLC to allow the driver and passenger doors of the cab of its specialized armored vehicles to be welded shut. Loomis believes that welding shut the cab doors and adding two new doors behind the cab will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption, while allowing secure armored car operations with reduced staff.

DATES: Comments must be received on or before May 7, 2021.

ADDRESSES:

You may submit comments identified by Docket Number FMCSA–2020–0191 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=FMCSA-2020-0191.* Follow the online instructions for submitting comments.

• *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

• *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the

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

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–5541, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. If you have questions on viewing or submitting material to the docket, call Docket Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA 2020–0191), indicate the specific section of this document to which the comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/#!docket Detail;D=FMCSA-2020-0191,* click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov/#!docket Detail;D=FMCSA-20xx-00xx* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

Privacy Act

DOT solicits comments from the public to better inform its rulemaking process, in accordance with 5 U.S.C. 553(c). DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL 14—Federal Docket Management System), which can be reviewed at *www.transportation.gov/privacy.*

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31315(b) to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request. The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

Loomis' Application for Exemption

The FMCSRs require that (1) cab compartment doors or door parts used as an entrance or exits shall not be missing or broken; (2) doors shall not sag so that they cannot be properly opened or closed; and (3) no door shall be wired shut or otherwise secured in the closed position so that it cannot be readily opened. *Exception: When the vehicle is loaded with pipe or bar stock that blocks the door and the cab has a roof exit.* Loomis has applied for an exemption from 49 CFR 393.203(a) to allow the cab doors on its specialized armored vehicles to be welded shut, given the addition of new doors behind the cab. A copy of the application is included in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(6), FMCSA requests public comment from all interested persons on Loomis' application for an exemption from 49 CFR 393.203(a). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–07102 Filed 4–6–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2020–0027–N–40]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On December 1, 2020, FRA published a notice providing a 60-

day period for public comment on the ICR.

DATES: Interested persons are invited to submit comments on or before May 7, 2021.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, telephone: (202) 493–0440, email: *Hodan.wells@dot.gov.*

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On December 1, 2020, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICR for which it is now seeking OMB approval. *See* 85 FR 77337.

On February 1, 2021, the Transportation Trades Department, AFL–CIO (TTD) commented on this ICR. On February 25, 2021, FRA staff met with TTD to discuss its comment. A summary of the discussion is available in the above listed docket. TTD explained its concerns with FRA's proposed revisions to form FRA F 6180.151, namely that the revised form would allow users to voluntarily self-identify as railroad employees. TTD noted that full consideration, and investigation if needed, of the alleged violation should be given to each report regardless of the user's affiliation. TTD questioned the benefits that FRA would receive from having this information and stated that users may not realize that this self-identification is optional. TTD expressed that railroad employees could potentially face employer retaliation by self-identifying as railroad employees when submitting information to FRA through this form. TTD requested that FRA add language to this form, clarifying that this field is voluntary.

On the proposed form, FRA makes clear that members of the public and rail employees are not required to identify themselves or their place or type of employment to report an alleged violation or other safety concern to FRA. Indeed, the form definitively states this at the top and reiterates that no identifying information is required to report, but that identifying information is helpful in assisting FRA staff in assessing the matter and then, if necessary, taking appropriate action. The proposed form provides the following instructions:

> Your submission is voluntary and anonymous unless you choose to provide us with your contact information. Choosing not to provide your contact information may affect FRA's ability to follow up with you on the status of the investigation and may prevent FRA from adequately investigating the alleged violation, complaint, or inquiry.

On the proposed form, the optional field for the respondent to identify as a ''Public Citizen'' or ''Railroad Employee'' falls under these instructions that clearly state the following:

> AVF Collection Questions
>
> * Anonymous submissions are allowed, but FRA strongly encourages at least one type of contact information for follow-up communications.

The optional identifying fields are included to assist FRA in determining if, where, and when an alleged violation may have occurred and what appropriate follow-up actions are necessary to assess and investigate the matter. Further, this optional identifying information is helpful to FRA in assessing trends and patterns of safety violations or concerns over time. The information is not shared outside the agency and is protected to the extent allowed under Federal law. The form can be submitted if any or all the identifying information fields are left blank, so respondents can share as much or as little information as they deem necessary.

FRA determined that its form and the data collection and management process afterward required improvement to assist FRA staff in assessing and then, if necessary, taking appropriate action on alleged violations and other safety inquiries. Further, FRA has reviewed its processes and determined that this form and its revisions would improve FRA's service to the public and assessment of alleged violations and other safety inquiries.

In response to internal feedback that it would be helpful if ''Hours of Service'' were a standalone category in the ''Category of Alleged Violation, Complaint, or Inquiry'' drop down menu, FRA has made this change to the form to allow FRA staff to better keep track of Hours of Service violations, complaints, or inquiries. Before OMB decides whether to approve the proposed collection of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.10(b); *see also* 60 FR 44978, 44983 (Aug. 29, 1995). OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Federal Railroad Administration Alleged Violation and Inquiry Form.[1]

OMB Control Number: 2130–0590.

Abstract: The FRA Alleged Violation and Inquiry Form is a response to section 307(b) of the Rail Safety Improvement Act of 2008, which requires FRA to ''provide a mechanism for the public to submit written reports of potential violations of Federal railroad safety and hazardous materials transportation laws, regulations, and orders to the Federal Railroad Administration.'' The FRA Alleged Violation and Inquiry Form allows the public to submit alleged violations, complaints, or inquiries directly to FRA. The form allows FRA to collect information necessary to investigate the alleged violation, complaint, or inquiry, and to follow up with the submitting party. FRA may share the information collected with partnering States under its State Rail Safety Participation

[1] FRA is revising the title of OMB Control Number 2130–0590 (formerly titled ''Alleged Violation Reporting Form'').

Program and with law enforcement agencies.

FRA will use the information collected under the form to identify problem areas and take necessary action to prevent potential accidents of the type indicated by the information submitted from occurring.

FRA's proposed revisions to the form include: (1) Adding several dropdown menus for form elements (*e.g.,* type, title, preferred method of contact, position, category of submission, date, time, city, State, and entity involved) so that users can quickly provide complete contact and incident information while having to hand-enter less information; (2) adding a question requesting the users identify if they are members of the public, a railroad employee, or other; and (3) informing users that they will receive an automated response from FRA after the form is submitted. The revisions are designed to make the existing form easier to use and more understandable, and to simplify the collection of information. If users elect to provide any identifying information, it will be protected to the extent allowed under Federal law and FRA will only use this identifying information to follow up with users regarding their submissions. The revised form will ensure that users provide the necessary information so that FRA staff can review and respond more quickly. The revised form also will facilitate FRA's ability to maintain the data collected in a more useful and uniform manner, as the new dropdown boxes will assist FRA in receiving more standardized responses.

Type of Request: Revision of a currently approved information collection.

Affected Public: Public.

Form(s): FRA F 6180.151.

Respondent Universe: Public.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 600.

Total Estimated Annual Burden: 70 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $1,890.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that a respondent is not required to respond to, conduct, or sponsor a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Acting Chief Counsel.

[FR Doc. 2021–07182 Filed 4–6–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT–MARAD–2021–0017]

Request for Comments on the Renewal of a Previously Approved Information Collection: Application for Construction Reserve Fund and Annual Statements (CRF)

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information collected is required in order for MARAD to determine whether the applicant is qualified for the benefits of the CRF program. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before June 7, 2021.

ADDRESSES: You may submit comments [identified by Docket No. DOT–MARAD–2021–0017] through one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Instructions: All submissions must include the agency name and docket number for this rulemaking.

Note: All comments received will be posted without change to *www.regulations.gov* including any personal information provided.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Electronic Access and Filing

A copy of the notice may be viewed online at *www.regulations.gov* using the docket number listed above. A copy of this notice will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.FederalRegister.gov* and the Government Publishing Office's website at *www.GovInfo.gov.*

FOR FURTHER INFORMATION CONTACT: Daniel Ladd, 202–366–1859, Office of Financial Approvals, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

Title: Application for Construction Reserve Fund (CRF) and Annual Statements.

OMB Control Number: 2133–0032.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: The Construction Reserve Fund (CRF), authorized by 46 U.S.C. chapter 533, is a financial assistance program which provides tax deferral benefits to U.S.-flag operators. Eligible parties can defer the gain attributable to the sale or loss of a vessel, provided the proceeds are used to expand or modernize the U.S. merchant fleet. The primary purpose of the CRF is to promote the construction, reconstruction, reconditioning, or acquisition of merchant vessels which are necessary for national defense and to the development of U.S. commerce.

Respondents: Citizens who own or operate vessels in the U.S. foreign or domestic commerce who desire tax benefits under the CRF program must respond.

Affected Public: Owners or operators of vessels in the domestic or foreign commerce.

Estimated Number of Respondents: 17.

Estimated Number of Responses: 17.

Estimated Hours per Response: 9.

Annual Estimated Total Annual Burden Hours: 153.

Frequency of Response: Annually.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.93.

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–07141 Filed 4–6–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0088]

Request for Comments on the Renewal of a Previously Approved Information Collection—Center of Excellence for Domestic Maritime Workforce Training and Education (CoE) Annual Application for Designation

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice provides interested parties with the opportunity to comment on the Maritime Administration's (MARAD's) intention to request approval, for three years, of a previously approved information collection related to designating Centers of Excellence for Domestic Maritime Workforce Training and Education (CoE). Interested covered training institutions can voluntarily apply to MARAD with sufficient information to demonstrate they meet the designation criteria. Designated CoEs may voluntarily submit renewal applications prior to expiry of their CoE designation.

DATES: Comments should be submitted on or before June 7, 2021.

ADDRESSES: You may submit comments identified by DOT Docket No. MARAD–2018–0088 through one of the following methods:

- *Website/Federal eRulemaking Portal: www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 of the Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this rulemaking.

Note: All comments received will be posted without change to *www.regulations.gov* including any personal information provided.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Electronic Access and Filing

A copy of the notice may be viewed online at *www.regulations.gov* using the docket number listed above. A copy of this notice will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.FederalRegister.gov* and the Government Publishing Office's website at *www.GovInfo.gov.*

FOR FURTHER INFORMATION CONTACT: Gerard Wall, Maritime Administration, at *gerard.wall@dot.gov* or at 202–366–1250. You may send mail to Gerard Wall, Centers of Excellence Program Manager, Room W23–470, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Center of Excellence for Domestic Maritime Workforce Training and Education Annual Applications for Designation.

OMB Control Number: 2133–0549.

Type of Request: Renewal of a previously approved information collection.

Abstract: To implement Section 3507 of the National Defense Authorization Act of 2018, Public Law 115–91 (the ''Act''), codified at 46 U.S.C. 51705 (previously designated as 46 U.S.C. 54102), MARAD developed a procedure to recommend to the Secretary the designation of eligible institutions as Centers of Excellence for Domestic Maritime Workforce Training and Education (CoE). Pursuant to the Act, the Secretary of Transportation may designate certain eligible and qualified training entities as CoEs and may subsequently execute Cooperative Agreements with CoE designees. Authority to administer the CoE program is delegated to MARAD in 49 CFR 1.93(a). The previously approved policy for collecting information is required to administer the Center of Excellence program which supports the DOT strategic goal of Economic Competitiveness, and the MARAD strategic goal to Maintain and Modernize the Maritime workforce.

Respondents: ''Community Colleges or Technical Colleges'' and ''Maritime Training Centers'' in certain eligible locations are eligible to apply for CoE designation. Additionally, only ''Maritime Training Centers'' with a maritime training program in operation on 12 December 2017 are eligible under the statute.

Affected Public: Community Colleges, Technical Colleges and Maritime Training Centers.

Estimated Number of Respondents: 200.

Estimated Number of Responses: 100.

Estimated Hours per Response: 48.

Annual Estimated Total Annual Burden Hours: 4,800.

Frequency of Response: Annually.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.93.

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–07142 Filed 4–6–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT–MARAD–2021–0016]

Request for Comments on the Renewal of a Previously Approved Information Collection: Request for Waiver of Service Obligation, Request for Deferment of Service Obligation, and Application for Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information collected will be used to determine if waivers and deferments may be granted to U.S. Merchant Marine Academy (USMMA) graduates and to State Maritime Academy (SMA) graduates who participated in the Student Incentive Payment (SIP) Program. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before June 7, 2021.

ADDRESSES: You may submit comments [identified by Docket No. DOT–MARAD–2021–0016] through one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Search using the

above DOT docket number and follow the online instructions for submitting comments.

• *Fax:* 1–202–493–2251.

• *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Instructions: All submissions must include the agency name and docket number for this rulemaking.

Note: All comments received will be posted without change to *www.regulations.gov* including any personal information provided.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Electronic Access and Filing

A copy of the notice may be viewed online at *www.regulations.gov* using the docket number listed above. A copy of this notice will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.FederalRegister.gov* and the Government Publishing Office's website at *www.GovInfo.gov.*

FOR FURTHER INFORMATION CONTACT: Danielle Bennett (202) 366–5469, Office of Maritime Workforce Development, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: *Title:* Request for Waiver of Service Obligation, Request for Deferment of Service Obligation, Application for Review.

OMB Control Number: 2133–0510.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: The Information collection is essential for determining if a student or graduate of the USMMA or a SMA that participated in the Student Incentive Payment (SIP) Program has a valid circumstance preventing them from fulfilling the requirements of the service obligation contract signed at the time of their enrollment in USMMA or the SIP program. It also permits the Maritime Administration (MARAD) to determine if a graduate, who wishes to defer their service obligation to attend graduate school, is eligible to receive a deferment. Student or graduates who submit a waiver or deferral request have an opportunity to appeal MARAD's decision. This collection is essential for determining if the original decision for a waiver or deferral request should be overturned. Their service obligation is required by law.

Respondents: U.S. Merchant Marine Academy students and graduates, and subsidized students and graduates.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 11.

Estimated Number of Responses: 11.

Estimated Hours per Response: 30 minutes.

Annual Estimated Total Annual Burden Hours: 5.30.

Frequency of Response: Annually.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–07143 Filed 4–6–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT–MARAD–2021–0018]

Request for Comments on the Renewal of a Previously Approved Information Collection: Application and Reporting Requirements for Participation in the Maritime Security Program

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information to be collected will be used to determine if selected vessels are qualified to participate in the Maritime Security Program. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before June 7, 2021.

ADDRESSES: You may submit comments [identified by Docket No. DOT–MARAD–2021–0018] through one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.

• *Fax:* 1–202–493–2251.

• *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Rhonda Davis, 202–366–6379, Office of Sealift Support, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W23–343, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Application and Reporting Requirements for Participation in the Maritime Security Program.

OMB Control Number: 2133–0525.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: The Maritime Security Act of 2003 extended under Section 3508 of the National Defense Authorization Act for Fiscal Year 2013, Public Law 112–239 provides for the enrollment of qualified vessels in the Maritime Security Program Fleet. Applications and amendments are used to select vessels for the fleet. Periodic reporting is used to monitor adherence of contractors to program parameters.

Respondents: Vessel operators.

Affected Public: Business or other for Profit.

Estimated Number of Respondents: 15.

Estimated Number of Responses: 195.

Annual Estimated Total Annual Burden Hours: 210.

Frequency of Response: Monthly/Annually.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.93.

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–07140 Filed 4–6–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2021–0039]

RIN 2137–AF51

Pipeline Safety: Pipeline Leak Detection, Leak Repair, and Methane Emission Reductions Public Meeting

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting during which stakeholder groups and members of the public will have the opportunity to share and discuss perspectives on improving gas pipeline leak detection and repair. PHMSA expects to cover subjects that include examining the sources of methane emissions from natural gas pipeline systems, current regulatory requirements for managing fugitive and vented emissions, industry leak detection and repair practices, and the use of advanced technologies and practices to reduce methane emissions from gas pipeline systems. The meeting will occur virtually on May 5–6, 2021. This discussion is intended to inform a rulemaking and report to Congress on natural gas pipeline leak detection and repair mandated by Sections 113 and 114 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020.

DATES: The leak detection and repair public meeting will occur on May 5–6, 2021. Members of the public who want to participate in the virtual meeting must register no later than April 30, 2021. Individuals requiring accommodations, such as sign language interpretation or other aids, are asked to notify PHMSA no later than April 26, 2021. For additional information, please see the **ADDRESSES** section of this notice.

Individuals who are interested in submitting comments on the subject of the public meeting must do so by May 24, 2021.

ADDRESSES: This meeting will be held virtually. The meeting agenda and instructions on how to attend virtually will be published once they are finalized on the following public meeting registration page at: *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=152.* Presentations will be available on the meeting website and on the E-gov website, *https://regulations.gov,* under docket number PHMSA–2021–0039, no later than 30 days following the meeting. You may submit comments, identified by Docket No. PHMSA–2021–0039, by any of the following methods:

- *E-Gov Web: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.
- *Mail:* Docket Management System: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* DOT Docket Management System: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.
- *Instructions:* Identify the Docket No. PHMSA–2021–0039, at the beginning of your comments. If you submit your comments by mail, please submit two copies. If you wish to receive confirmation that PHMSA received your comments, you must include a self-addressed stamped postcard. Internet users may submit comments at: *http://www.regulations.gov.*
- *Note:* All comments received are posted without edits to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.
- *Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*
- *Confidential Business Information:* Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments in response to this notice 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 notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) § 190.343, you may ask PHMSA to provide confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential;'' (2) send PHMSA a copy of the original document with the CBI deleted along with the original, unaltered document; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the Freedom of Information Act and only the redacted version will be placed in the public docket of this notice. Submissions containing CBI should be sent to Sayler Palabrica, 1200 New Jersey Avenue SE, DOT: PHMSA—PHP–30, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket.
- *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. Alternatively, you may review the documents in person at the street address listed above.

FOR FURTHER INFORMATION CONTACT: Sayler Palabrica by phone at 202–744–0825 or via email at *sayler.palabrica@dot.gov.*

Sam Hall by phone at 804–551–3876 or via email at *sam.hall@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Natural gas is composed primarily of methane, a greenhouse gas several times more potent than carbon dioxide. Prompt detection and repair of methane leaks from gas pipelines can result in safety, environmental and economic benefits. Section 113 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (PIPES Act of 2020; Division R of the Consolidated Appropriations Act of 2021; Pub. L. 116–260) mandates that the Secretary of Transportation promulgate a final rule concerning gas pipeline leak detection and repair programs no later than one year after the enactment of the law (*i.e.,* by December 27, 2021).

Additionally, Section 114(a) and (b) of the PIPES Act of 2020 requires that each pipeline operator update their inspection and maintenance plans to

contribute to eliminating hazardous leaks and minimizing releases of natural gas from pipeline facilities and for PHMSA and its state partners to inspect these plans. Section 114(c) mandates that the Comptroller General of the United States conduct a study and provide a report evaluating the procedures used by the Secretary of Transportation and the states in reviewing the plans prepared by pipeline operators and provide recommendations for how to further minimize natural gas releases. Finally, Section 114(d) directs PHMSA to submit a report to Congress discussing the best available technologies or practices to prevent or minimize the need to intentionally vent natural gas, without compromising pipeline safety, during pipeline repairs, replacements, maintenance, and operations. Section 114(d)(2) further directs PHMSA to issue rulemaking based on the results of that report.

The proceedings from this meeting, including public discussion and comments, are intended to inform PHMSA's approach to issuing a rulemaking related to the Section 113 leak detection and repair mandate and the inspection, reporting, and rulemaking requirements in Section 114.

II. Meeting Details and Agenda

The gas pipeline leak detection and repair public meeting will include discussions between government, public interest groups (environmental advocacy and public safety stakeholders), industry, and the general public on leaks and emissions from pipeline systems and how best to detect and repair them. On May 5, 2021, the agenda will include an introduction from PHMSA on the mandates from the PIPES Act of 2020 and panel discussions on perspectives from Federal and state safety and environmental regulators, public interest groups, and the regulated industry. The agenda for May 6, 2021, is focused on research and development efforts on leak detection and repair technologies and best practices. Each segment will include a question-and-answer period, and there will be an additional opportunity for public comment at the end of each day. PHMSA will provide a meeting agenda on the meeting registration web page listed in the **ADDRESS** section of this notice.

III. Public Participation

The meeting will be open to the public. Members of the public who wish to attend must register on the meeting website and include their names and organization affiliation. PHMSA will provide members of the public with opportunities to make statements during the course of this meeting. PHMSA is committed to providing all participants with equal access to this meeting. If you need disability accommodations, please contact Sam Hall by phone at 804–551–3876 or via email at *sam.hall@dot.gov.*

PHMSA is not always able to publish a notice in the **Federal Register** quickly enough to provide timely notice regarding last minute issues that may impact a previously announced meeting. Therefore, individuals should check the meeting website listed in the **ADDRESSES** section of this notice or contact Sam Hall by phone at 804–551–3876 or via email at *sam.hall@dot.gov* regarding any possible changes.

PHMSA invites public participation and public comment on the topics of this meeting. Please review the **ADDRESSES** section of this notice for information on how to submit written comments.

Issued in Washington, DC, on April 2, 2021, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2021–07152 Filed 4–6–21; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before May 7, 2021.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 1, 2021.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data—Granted			
12116–M	Proserv UK Ltd	173.201, 173.301(f), 173.302a, 173.304a.	To modify the special permit to authorize a new design and corrosion resistant cylinder.
14372–M	Kidde Technologies Inc	173.309(a), 180.213(a)	To modify the special permit to update the permit with the addition of a new part number.
14784–M	Weldship Corporation	180.209(a), 180.209(b), 180.209(b)(1)(iv).	To modify the special permit to clarify that either AE/UE or 100% UE testing is authorized for the ten-year requalification period of cylinders.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
16154–M	Patriot Fireworks USA, LLC	172.101(i), 173.62, 173.62	To modify the special permit to authorize cargo webbing (netting) or metal fencing or grating as authorized methods to secure fireworks against significant lateral movement and preventing the release of any fireworks into the interior of the freight container.
16163–M	The Dow Chemical Company	172.203(a), 172.302(c), 180.605(h), 180.605(h)(3).	To modify the special permit to authorize additional liquid hazmat to be offered for transportation.
20294–M	The Dow Chemical Company	172.302(c), 173.203(a), 180.605(h)(3).	To modify the special permit to authorize a higher maximum allowable working pressure for UN T11 portable tanks and to authorize two additional hazardous materials.
21041–M	KLA Corporation	173.212, 173.213	To modify the special permit to authorize a change in the description of the hazmat being offered for transportation.
21061–M	KLA Corporation	173.212, 173.213	To modify the special permit to authorize a new hazmat to be included in the permit.
21063–M	Cobham Mission Systems Orchard Park Inc.	173.302(a)(1)	To modify the special permit to decrease the test pressure.
21112–N	Best Sanitizers, Inc	173.154(b)(1)	To authorize the transportation in commerce of certain corrosive materials as limited quantities despite exceeding the quantity limitations specified in 173.154.
21125–N	CTS Cylinder Sales LLC	180.209(a), 180.209(b)(1)	To authorize the transportation in commerce of certain hazardous materials in DOT Specification 3AL cylinders manufactured from aluminum allow 6061–T6 that are requalified every ten years rather than every five years using 100% ultrasound examination.
21136–N	Cimarron Composites, LLC	173.302(a)(1)	To authorize the manufacture, mark, sale, and use fiber reinforced composite cylinders with non-load sharing plastic liners in compliance with UN/ISO11515: 2013, Type 4.
21137–N	DGM Italia SRL	172.101(j)	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg by cargo-only aircraft.
21157–N	Innophos, Inc		To authorize the transportation in commerce of polyphosphoric acid in non-authorized specification packaging.
21160–N	Alliant Techsystems Operations LLC.	173.185(a)(1)	To authorize the transportation in commerce of lithium batteries, that are not of a type proven to have passed the requirements of 38.3 in the UN Manual of Tests and Criteria, when contained in a subassembly.
21185–N	Hach Company	172.102(b)(4), 173.36(a)	To authorization the transportation in commerce of certain PG II corrosive materials in UN 50H packagings.
21197–N	Walmart Inc	172.301(a)(1), 172.301(c), 172.301(d), 172.312(a)(2).	To authorize the one time one way transportation of hand sanitizer for donation in mismarked cartons. (mode 1)
21202–N	Lanxess Canada Co./cie	173.24(f)(1), 173.32(e)	To authorize the one-time, one-way transportation in commerce of organometallic liquid in a portable tank that has a defective valve that has been temporarily repaired.
Special Permits Data—Denied			
16074–M	Welker, Inc	173.201, 173.202, 173.203	To modify the special permit to clarify the volume capacity of the approved pressure vessels.
20939–N	Arianegroup SAS	172.101(c), 173.166	To authorize the manufacture, mark, sale, and use of certain fire suppression devices as safety devices.
21068–N	Firepro Systems Limited	173.166	To authorize the transportation in commerce of fire extinguishing products which are classed as Safety Devices.
21077–N	Kraton Corporation	173.31(d)(1)(ii)	To authorize the transportation in commerce of tank cars that have been leakage tested in lieu of visually inspected prior to shipping.
21085–M	Omron Robotics and Safety Technologies, Inc.	172.101(j), 173.185(b)(3)	To modify the special permit to authorize additional supplemental ICAO TI packing instructions.
21098–N	The Dow Chemical Company	172.203(a), 172.302(c), 173.31(d)(1)(ii).	To authorize the transportation in commerce of tank car tanks in which the manway cover gasket has been subjected to an alternative external visual inspection.
21147–N	iPackchem Group SAS	173.158(f)(3)	To authorize the manufacture, mark, sale, and use of UN 4G specification packagings for the transport of nitric acid where the primary receptacles are not individually overpacked in tightly closed metal packagings.
21153–N	BVI Medical, Inc	171.24(d)(2), 173.302(f)	To authorize the transportation in commerce of oxidizing gases contained in small pressure vessels via cargo-only aircraft.
21170–N	Westwind Helicopters, Inc	172.101(j)	To authorize the transportation in commerce of certain hazardous materials by passenger-carrying aircraft in quantities that exceed the limitation in Column (9A) of the 172.101 Table.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
		Special Permits Data—Withdrawn	
3121–M	Department of Defense US Army Military Surface Deployment & Distribution Command.	172.101(i)	To modify the special permit to correct certain references and practices to more accurately align with current regulations and practices.
10631–M	Department of Defense (military Surface Deployment & Distribution Command).	173.243, 173.244	To modify the special permit to correct certain references and practices to more accurately align with current regulations and practices.
21058–N	Versum Materials, Inc	180.209	To authorize the transportation in commerce of cylinders with a water capacity not exceeding 125 lbs. that have been retested every 10 years as opposed to the 5-year retest frequency required in § 180.209. In addition, it is requested that the special permit provide relief from § 180.209(b)(1)(iv) in that combined acoustic emission and ultrasonic examination (AE/UE) or 100% UE methods are authorized in lieu of hydrostatic testing.
21071–N	The Kansas City Southern Railway Company.	174.85	To authorize the transportation in commerce of rail shipments without using buffer cars as required by 49 CFR 174.85.
21133–N	Securaplane Technologies, Inc.	172.102(b)(2)	To authorize the transportation in commerce of lithium ion batteries at a state of charge exceeding 30%.
21145–N	Reg Grays Harbor LLC	173.31(d)(1)(ii)	To authorize the transportation in commerce of tank cars that have been pneumatic positive pressure tested in lieu of visually inspected prior to shipping.

[FR Doc. 2021–07145 Filed 4–6–21; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before May 7, 2021.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 1, 2021.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21200–N	National Aeronautics and Space Administration.	173.301(a)(1), 173.301(f)(1), 173.301(h)(3), 173.302(a)(1), 173.302(f)(2).	To authorize the transportation in commerce of non-DOT specification cylinders containing compressed air. (mode 1)
21201–N	Mitsubishi Motors North America, Inc.	172.101(j)	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg by cargo-only aircraft. (mode 4)
21203–N	Daklapack US Inc	173.199(a)	To authorize the transportation in commerce of category B biological samples without rigid outer packaging. (modes 1, 4)
21204–N	Aegis Resource Management LLC.	172.400	To authorize the transportation in commerce of certain waste hazardous materials when utilizing alternate hazard communication. (mode 1)

SPECIAL PERMITS DATA—Continued

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21205–N	Apollo Fusion, Inc		To authorize the transportation of in commerce of xenon in three-liter Composite Overwrapped Pressure Vessels that are not DOT certified. (mode 1)
21206–N	Pacira Cryotech, Inc	171.23(a)(2)(iv), 173.304(f)(1), 173.304(f)(2).	To authorize the transportation in commerce of small cartridges manufactured to ISO 11118, and are not equipped with pressure relief devices, by air. (mode 1, 4, 5)
21208–N	LG Energy Solution, Ltd	172.101(j)	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg by cargo-only aircraft. (mode 4)
21209–N	Atlas Air, Inc	172.101(j)	To authorize the transportation in commerce of a material forbidden for transportation by air by cargo-only aircraft. (mode 4)

[FR Doc. 2021–07144 Filed 4–6–21; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Modifications to Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before April 22, 2021.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 1, 2021.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
3121–M	Department of Defense US Army Military Surface Deployment & Distribution Command.	172.101(i)(3)	To modify the special permit to update references to military manuals referenced in the permit. (mode 1)
10631–M	Department of Defense US Army Military Surface Deployment & Distribution Command.	173.243, 173.244	To modify the special permit to remove outdated references to military programs used and to more closely align with the HMR. (mode 1)
16016–M	ISI Automotive Austria Gmbh	173.301, 173.302a, 173.305	To modify the special permit to authorize the addition of a further tube material for the pressure vessel shell of vessels with an outer diameter of 30mm. (modes 1, 2, 3, 4, 5)
21012–M	Praxair Distribution, Inc.	172.203(a), 180.209	To modify the special permit to remove the requirement for putting the SP number on shipping papers and to make it more consistent with similar special permits. (modes 1, 2, 3, 4, 5)

[FR Doc. 2021–07139 Filed 4–6–21; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

[Docket ID OCC–2021–0006]

Mutual Savings Association Advisory Committee

AGENCY: Office of the Comptroller of the Currency (OCC), Department of the Treasury.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The OCC announces a meeting of the Mutual Savings Association Advisory Committee (MSAAC).

DATES: A virtual public meeting of the MSAAC will be held on Tuesday, April 27, 2021, beginning at 11:00 a.m. Eastern Daylight Time (EDT).

ADDRESSES: The OCC will host the April 27, 2021 meeting of the MSAAC virtually.

FOR FURTHER INFORMATION CONTACT: Michael R. Brickman, Deputy Comptroller for Thrift Supervision, (202) 649–5420, Office of the Comptroller of the Currency, Washington, DC 20219. You also may access prior MSAAC meeting materials on the MSAAC page of the OCC's website at Mutual Savings Association Advisory Committee.

SUPPLEMENTARY INFORMATION: Under the authority of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the regulations implementing the Act at 41 CFR part 102–3, the OCC is announcing that the MSAAC will convene a virtual meeting on Tuesday, April 27, 2021. The meeting is open to the public and will begin at 11:00 EDT. The purpose of the meeting is for the MSAAC to advise the OCC on regulatory or other changes the OCC may make to ensure the health and viability of mutual savings associations. The agenda includes a discussion of current topics of interest to the industry.

Members of the public may submit written statements to the MSAAC. The OCC must receive written statements no later than 5:00 p.m. EDT on Tuesday, April 20, 2021. Members of the public may submit written statements to *MSAAC@occ.treas.gov.*

Members of the public who plan to attend the virtual meeting should contact the OCC by 5:00 p.m. EDT on Tuesday, April 20, 2021, to inform the OCC of their desire to attend the meeting and to obtain information about participating in the meeting. Members of the public may contact the OCC via email at *MSAAC@OCC.treas.gov* or by telephone at (202) 649–5420. Members of the public who are hearing impaired should call (202) 649–5597 (TTY) by 5:00 p.m. EDT on Tuesday, April 20, 2021, to arrange auxiliary aids for this meeting.

Attendees should provide their full name, email address, and organization, if any.

Blake J. Paulson,

Acting Comptroller of the Currency.

[FR Doc. 2021–07122 Filed 4–6–21; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0176]

Agency Information Collection Activity: Certification of Training Hours, Wages, and Progress

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 7, 2021.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0176'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0176'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 501(a), and 38 U.S.C. 3677.

Title: Certification of Training Hours, Wages, and Progress.

OMB Control Number: 2900–0176.

Type of Review: Reinstatement of a previously approved collection.

Abstract: VA Form 28–1905c, Certification of Training Hours, Wages, and Progress is used to maintain adequate records for on-the job and other specialized training programs to include the claimant's monthly progress and attendance under 38 U.S.C. 3677. This information is essential to track the type and hours of training, as well as the rating of the claimant's performance toward the completion of his or her training program under 38 U.S.C. Chapter 31 and 38 U.S.C Chapter 35. Without the information gathered on this form, benefits could be delayed under 38 U.S.C. 501(a).

Affected Public: Individuals and households.

Estimated Annual Burden: 400 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,600.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer (Alt), Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–07174 Filed 4–6–21; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 86 Wednesday,

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Part II

Federal Communications Commission

47 CFR Parts 1 and 54

Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[WC Docket Nos. 11–10 and 19–195; FCC 21–20; FRS 17540]

Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, a *Third Report and Order* adopted by the Commission establishes important measures for collecting highly accurate and reliable broadband data, including requiring facilities-based fixed service providers to report broadband internet access service coverage in the Digital Opportunity Data Collection and to identify where such services are offered to residential locations as well as where they are offered to business locations; requiring the collection of speed and latency information from fixed service providers; requiring terrestrial fixed wireless services providers to report on the coordinates of their base stations; and requiring mobile providers to provide additional information reporting concerning provider networks and propagation, which will allow the Commission to verify provider data more effectively. In addition, the *Third Report and Order* establishes the requirements for challenges to fixed and mobile service coverage reporting and for challenges to the Fabric data. The *Third Report and Order* also establishes standards for identifying locations that will be included in the Fabric and establishes standards for enforcement of the requirements associated with the Digital Opportunity Data Collection.

DATES: Effective May 7, 2021.

FOR FURTHER INFORMATION CONTACT: Wireline Competition Bureau, Kirk Burgee, at (202) 418–1599, *Kirk.Burgee@fcc.gov,* or Wireless Telecommunications Bureau, Garnet Hanly, at (202) 418–0995, *Garnet.Hanly@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order* in WC Docket Nos. 11–10 and 19–195, FCC 21–20, adopted January 13, 2021 and released January 19, 2021. The full text of this document is available for public inspection on the Commission's website at *https://docs.fcc.gov/public/attachments/FCC-21-20A1.pdf.*

Synopsis

I. Introduction

1. The Commission has long recognized that precise, granular data on the availability of fixed and mobile broadband are vital to bringing digital opportunity to all Americans, no matter where they live. To meet the need for such data, in August 2019 the Commission adopted the Digital Opportunity Data Collection, a new data collection distinct from the FCC Form 477, to collect geographically precise and detailed data on broadband service deployment, which would be subject to stakeholder challenges. In July 2020, the Commission adopted a *Second Order and Third Further Notice* in this proceeding that implemented requirements of the Broadband DATA Act, enacted in March of 2020, and further developed the framework and elements of the Digital Opportunity Data Collection.

2. Today, we build on our earlier action creating the Digital Opportunity Data Collection and take key additional steps to ensure that both the data collection itself, and the measures for verifying the accuracy of the data collected, will yield a robust and reliable data resource for the Commission, Congress, federal and state policymakers, and consumers to evaluate the status of broadband deployment throughout the United States. With Congress's recent appropriation of funding for the implementation of the Digital Opportunity Data Collection, the action we take today will help to ensure a rapid and smooth transition to the new mapping platform.

II. Background

3. The Commission began collecting data on broadband services, along with local telephone service and mobile telephony service, in 2000 with the establishment of the FCC Form 477 data collection. Initially, the Form 477 data collection was limited to subscribership information from broadband internet access service providers. In 2013, the Commission revised Form 477 to begin collecting deployment data, in addition to subscribership information, from such providers. The 2013 revisions required broadband internet access service providers to report lists of the census blocks in which they make service available to end users and to report the maximum speed offered in each census block, distinguishing between residential and non-residential services and by the technology used to provide service. This reporting format made available a nationwide broadband deployment dataset and significantly improved the Commission's understanding of the state of broadband deployment, enabling analyses that were previously not possible. The Commission has used the Form 477 deployment data to monitor the state of broadband deployment in annual reporting and to identify the unserved parts of the country for purposes of providing universal service support for broadband deployment, among other Commission proceedings and actions. Over time, however, it became clear that improved broadband data were needed to implement the Commission's Universal Service Fund (USF) programs and to support efforts to bridge the digital divide. Accordingly, in 2017, the Commission adopted a Further Notice of Proposed Rulemaking seeking comment on a variety of issues associated with improving the quality and accuracy of the broadband information the Commission collects as well as on how to streamline reporting requirements and thereby reduce filer burdens.

4. In August 2019, the Commission adopted the *Digital Opportunity Data Collection Order and Further Notice,* which created the Digital Opportunity Data Collection, a new data collection distinct from the Form 477 that would collect fixed broadband deployment data in the form of granular coverage maps and that would include a process for accepting crowdsourced data to challenge the accuracy of the submitted data. In adopting the Digital Opportunity Data Collection, the Commission stated its intention to establish a uniform national dataset of locations where broadband could be deployed and upon which new coverage data could be overlaid. The Commission directed the Universal Service Administrative Company (USAC)—the Administrator of the USF—to develop the new data collection and crowdsourcing platforms under the oversight of the Commission's Office of Economics and Analytics (OEA) and in consultation with the Wireline Competition Bureau (WCB), the Wireless Telecommunications Bureau (WTB), and the International Bureau (IB). In the *Digital Opportunity Data Collection Order and Further Notice,* the Commission also sought comment on a number of other proposals, including: (1) Additional technical standards for fixed broadband providers that could ensure greater precision for the Digital Opportunity Data Collection deployment reporting; (2) ways in which the Commission could incorporate crowdsourced and location-specific fixed broadband deployment

data into the Digital Opportunity Data Collection; and (3) how the Commission could incorporate the collection of accurate, reliable mobile voice and broadband coverage data into the Digital Opportunity Data Collection.

5. In March 2020, Congress passed the Broadband DATA Act, largely ratifying the Commission's approach to broadband mapping established in the Digital Opportunity Data Collection proceeding. The Broadband DATA Act requires the Commission to establish a semiannual collection of geographically granular broadband coverage data for use in creating coverage maps and processes for challenges to the coverage data and for accepting crowdsourced information, and it further directs the Commission to create a comprehensive database of broadband serviceable locations. Specifically, the Broadband DATA Act requires the Commission, within 180 days of its enactment, to issue rules to: (1) Require the semiannual collection and dissemination of granular data relating to the availability and quality of service of fixed and mobile broadband internet access service for use in conjunction with creating broadband coverage maps; (2) establish processes for the Commission to verify and protect the data collected; (3) establish a process for collecting verified data for use in the coverage maps from State, local, and Tribal governmental entities, from other federal agencies, and, if the Commission deems it in the public interest, from third parties; (4) establish the Fabric to serve as a foundation on which fixed broadband availability is overlaid; (5) establish a user-friendly challenge process through which the public and State, local, and Tribal governmental entities can challenge the accuracy of the coverage maps, provider availability data, or information in the Fabric; and (6) develop a process through which entities or individuals may submit specific information about the deployment and availability of broadband internet access service in the United States on an ongoing basis. The Broadband DATA Act generally refers to this submission of data as a ''crowdsourcing'' process. 47 U.S.C. 644(b).

6. However, the Broadband DATA Act departs from the Commission's approach in one significant respect: It prohibits the Commission from delegating any responsibilities under the Act to USAC or from using funds collected through the USF to pay any costs associated with fulfilling them. The upshot is that the Commission could not undertake the development of costly IT and filing platforms needed to implement the requirements under the Broadband DATA Act or the Commission's rules until Congress specifically appropriated funding for that purpose, which it has recently done.

7. In July 2020, the Commission completed the required rulemaking to align the Digital Opportunity Data Collection with the requirements of the Broadband DATA Act in the *Second Order and Third Further Notice.* The Commission adopted rules regarding reporting standards for fixed and mobile services consistent with Broadband DATA Act requirements, adopted the Fabric, and established processes for verifying the data collected from providers, including certification requirements, regular Commission audits, the acceptance of crowdsourced data, and the use of the High Cost Universal Broadband (HUBB) database. The Commission also adopted the Broadband DATA Act's enforcement standard for submitting inaccurate or incomplete data and established standards for confidential treatment of information received in the Digital Opportunity Data Collection and the Fabric.

8. In the *Second Order and Third Further Notice,* the Commission sought comment on certain remaining issues surrounding the implementation of the Digital Opportunity Data Collection, including: Refining the scope of broadband internet service providers required to file coverage data in the Digital Opportunity Data Collection; establishing speed thresholds and collecting latency data for fixed broadband services; establishing propagation modeling standards and on-the ground testing, and collecting infrastructure data, for mobile broadband service; establishing the contours of the challenge process; implementing the Fabric; establishing enforcement measures; and providing technical assistance to filers and challengers.

III. Third Report and Order

9. Today we build on our earlier efforts in establishing the Digital Opportunity Data Collection. The additional measures we adopt will ensure that the data the Commission will collect through the Digital Opportunity Data Collection will be highly accurate and reliable, not only for the Commission's purposes, but for the public and federal, State, Tribal and local stakeholders. In this *Third Report and Order,* we specify that facilities-based fixed service providers are required to report broadband internet access service coverage in the Digital Opportunity Data Collection and require these providers to identify where such services are offered to residential locations as well as where they are offered to business locations. We establish specific reporting requirements relating to speed and latency for fixed service providers and require terrestrial fixed wireless services providers to report on the coordinates of their base stations. For mobile services, we require additional information reporting concerning provider networks and propagation, which will allow the Commission to verify provider data more effectively. We also establish the requirements for challenges to fixed and mobile service coverage reporting and for challenges to the Fabric data. We establish standards for identifying locations that will be included in the Fabric, and we establish standards for enforcement of the requirements associated with the Digital Opportunity Data Collection. With the adoption of these steps, we are well positioned to move forward with the development of the elements of the Digital Opportunity Data Collection.

A. Service Providers Subject to the Collection of Broadband Internet Access Service Data

10. We adopt our proposal to require facilities-based providers to comply with the requirements of the Digital Opportunity Data Collection. Accordingly, we revise the definition of ''provider'' in our rules governing the Digital Opportunity Data Collection to reflect this requirement. Specifically, an entity is a facilities-based provider of a service if it supplies the service using any of five types of facilities: (1) Physical facilities that the entity owns and that terminate at the end-user premises; (2) facilities that the entity has obtained the right to use from other entities, such as dark fiber or satellite transponder capacity as part of its own network, or has obtained from other entities; (3) unbundled network element (UNE) loops, special access lines, or other leased facilities that the entity uses to complete terminations to the end-user premises; (4) wireless spectrum for which the entity holds a license or that the entity manages or has obtained the right to use via a spectrum leasing arrangement or comparable arrangement pursuant to subpart X of Part 1 of our Rules (47 CFR 1.9001–1.9080); or (5) unlicensed spectrum.

11. We adopt our tentative conclusion that the existing definition of facilities-based provider in our rules includes the categories of service providers identified in the Broadband DATA Act. In the *Second Order and Third Further Notice,*

the Commission proposed that the providers subject to the requirements adopted in the *Second Order* be limited to ''facilities-based providers.'' Although the Broadband DATA Act states that the Commission shall collect data from ''each provider of terrestrial fixed, fixed wireless, or satellite broadband,'' it also requires that providers report data that documents the areas where the provider ''has actually built out the broadband network infrastructure of the provider such that the provider is able to provide that service.'' Reading this provision as a whole, we construe it to require reporting only by facilities-based providers. Moreover, as we noted in the *Second Order and Third Further Notice,* facilities-based providers, as compared to resellers, are in the best position to know and report such information. We further noted our expectation that resellers' footprints would entirely overlap facilities-based providers' service areas, reducing the additional value such data would provide for our coverage maps. Several commenters support this approach.

12. We disagree with INCOMPAS's proposal to exempt providers using UNE loops, special access lines, or other leased facilities to provide broadband access to end users. INCOMPAS raises a number of arguments to support its position. According to INCOMPAS, the Commission's proposed definition risks overstating broadband availability which, INCOMPAS argues, Congress intended to avoid in drafting the Broadband DATA Act. INCOMPAS further argues that providers that use UNEs or special access lines purchased from an underlying provider do not have general access to these facilities and must query the underlying provider to confirm that they will be available. Consequently, it asserts that providers using leased UNEs and special access lines will only be in a position to report coverage information for existing customers, which INCOMPAS contends is highly confidential and competitively sensitive. INCOMPAS points out that the Commission has formerly accorded confidential treatment to similar information, requiring it to justify a different approach in this context. INCOMPAS also contends that collecting what is effectively customer information would conflict with the Broadband DATA Act's prohibition against requiring general reporting of coverage using lists of addresses or locations and argues that the data collected from UNE and special access purchasers will not provide the Commission with useful information because those providers are only aware of their own competitive service adoption and their reporting will not ''accurately depict the full availability of the incumbents' networks.'' INCOMPAS also argues that the Commission should not subject providers who lease UNEs to invest in new mapping requirements given the ongoing review of the Commission's current UNE policy.

13. We disagree. While providers who lease these facilities may not build or own the entire last-mile connection to the customer, they most often add essential infrastructure, such as Digital Subscriber Line Access Multiplexers (DSLAMs), to the underlying last-mile network to connect their customers and to enable broadband service provision. We construe the Broadband DATA Act as requiring the Commission to collect, from providers who have built out network infrastructure, data showing the areas where that infrastructure makes service to locations possible. We find no conflict with the terms of the Broadband DATA Act in requiring those providers who use leased infrastructure along with their own network facilities to report coverage. Nor do we agree that this will result in an overstatement of coverage, as INCOMPAS contends.

14. On the contrary, exempting providers that lease facilities from reporting in such a situation, as INCOMPAS urges us to do, could result in an *understatement* of coverage in such situations, since the incumbent is not required to make the same service available to the end users, and where the lessee has the right to exclusive use of facilities the incumbent could not use to provide service, it would not fall within the scope of Digital Opportunity Data Collection reporting requirements. In situations where the competitive provider does not deploy any facilities, a situation in which the competitive provider would not be subject to the requirements of the Digital Opportunity Data Collection, the incumbent provider's reporting obligation will yield the same footprint as the competitor's. However, in instances where the incumbent does deploy infrastructure to complete the connection, the incumbent's footprint would not necessarily capture the competitor's footprint or capability. There are numerous possible arrangements and circumstances through which a provider can make service available at a location, including an incumbent leasing facilities to another provider while not offering its own service to end-user customers. Similarly, an incumbent may not be able to provide the same level of service as a provider that leases facilities is able to provide and thus may report different coverage data. For these reasons, we reject INCOMPAS's argument that there is insufficient value in collecting data from providers based on service using leased facilities. These services are a potentially critical element of deployment in an area, even if they may not provide the entire picture. Rather than overstating coverage, collecting coverage data from all facilities-based providers able to serve an area will help to ensure we receive accurate and comprehensive data on broadband coverage. And in any event, to the extent that providers using leased facilities to provide broadband access did not ''actually buil[d] out the network,'' we note that nothing in the Broadband DATA Act prohibits us from collecting broadband service data from such providers, and for the reasons stated above, we believe that doing so will enhance our ability to produce maps that accurately depict the availability of broadband internet access service in accordance with the goals of the Broadband DATA Act.

15. We are similarly not persuaded by INCOMPAS's argument that confidentiality considerations should prevail here. Those concerns seem to arise only when a provider's reporting is based exclusively on leased UNE or special access lines, such that the provider can only report existing customer locations. When a provider's reporting depicts a combination of coverage based on its own network facilities in addition to coverage from leased facilities, the locations of its actual customers would be indistinguishable from locations of its potential customers. This will be true of filers generally, so there is little risk of competitive harm. Even in instances where a provider's service area includes only its existing customer locations, nothing in the publicly available data providers must submit regarding their service areas indicates whether they have already provisioned service at a given location or whether the provider is using its own facilities or leased facilities to do so. In such cases, however, we will nevertheless entertain requests for confidential treatment in accordance with the Commission's rules. In granting any such relief, we will aim to employ measures such as aggregation or redaction to publish the information at some form or level, rather than withholding the information from the public altogether.

B. Standards for Reporting Availability and Quality of Service Data for Fixed Broadband Internet Access Service

16. *Collecting Data on Mass-Market Services Only.* We require fixed providers to report data only on broadband internet access services, as defined by, and consistent with, the requirements of the Broadband DATA Act. In reporting such mass-market broadband service data, we require filers to indicate whether their polygons or locations depict service that is offered to residential customers and/or whether it is offered to business customers. However, we decline to require filers to report data on non-mass market services in the Digital Opportunity Data Collection. The Broadband DATA Act calls for the collection of data on broadband internet access services (which are, by definition, mass-market services), and we believe that expanding the scope of the Digital Opportunity Data Collection beyond that focus is not appropriate at this time.

17. In the *Second Order and Third Further Notice,* the Commission adopted the Broadband DATA Act's definition of ''broadband internet access service,'' which adopts by reference the meaning given to that term in 47 CFR 8.1 or any successor regulation. Section 8.1 of the Commission's rules defines broadband internet access service as ''a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service'' and ''also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence or that is used to evade the protections set forth in [Part 8].'' The Commission sought comment in the *Second Order and Third Further Notice* on requiring fixed providers reporting coverage in the Digital Opportunity Data Collection to distinguish between ''residential-only'' and ''business-and-residential'' services. The Commission also sought comment on requiring the collection of business-only broadband services, including non-mass market business broadband services.

18. The Broadband DATA Act only requires that the Commission collect availability and quality of service data on broadband internet access services, which includes broadband internet access service sold to businesses. Several commenters support collecting broadband coverage information distinguishing between residential and business service, rather than collecting commingled business and residential service data, as this will enable us to analyze more effectively the extent and type of deployment in an area, including by identifying areas that may only have mass-market business services available. Accordingly, we require fixed broadband service providers to indicate, for each polygon or location they submit in the Digital Opportunity Data Collection, whether the reported mass-market broadband service is available to residential customers and/or whether it is available to business customers. This represents a change from the Commission's proposal in the *Second Order and Third Further Notice* to collect data separately on residential and on business-and-residential offerings. We find that the approach we adopt will provide us with a more complete picture of the state of broadband deployment. We disagree with commenters urging us to collect a single category of mass-market services. As USTelecom and WISPA note, collecting only one category of service could ultimately overstate residential broadband service availability, leading to the misallocation of USF support.

19. Finally, we decline to collect non-mass market broadband service data in addition to mass market service data. The Commission sought comment in the *Second Order and Third Further Notice* on whether there would be a benefit to collecting data on non-mass-market business broadband services, such as might be purchased by healthcare organizations, schools and libraries, government entities, and other enterprise customers. We agree with commenters who contend that the collection of non-mass market broadband availability data goes beyond what Congress envisioned in the Broadband DATA Act. Whatever long-term value these data might hold, we conclude it is appropriate to prioritize required data collections. As NCTA notes, the Commission has a short timeframe to implement the provisions of the Broadband DATA Act, and we agree that the Commission should focus first on collecting the mass market broadband internet access service data needed to fulfill our statutory requirements. Moreover, important Commission efforts to close the digital divide depend on timely development of mass-market broadband coverage maps, such as the Rural Digital Opportunity Fund Phase II auction and the recently adopted 5G Fund for Rural America. If circumstances warrant in the future, we can re-visit this issue and look at including such non-mass market data once we have more experience with the Digital Opportunity Data Collection.

20. We also acknowledge USTelecom's second objection to the reporting and publishing of non-mass market business-only broadband availability concerning the competitively sensitive nature of such data. However, we do not find such concerns relevant when reporting availability for mass-market broadband internet access services being sold to businesses. As the comments demonstrate, USTelecom's concern is more appropriate for non-mass market business broadband services. Because we will exclusively collect data on mass-market broadband services, the arguments concerning the confidentiality of enterprise services are not relevant.

21. We disagree with ADTRAN and other commenters urging us to collect information on broadband services available to community anchor institutions or to collect business-only data for use in connection with the E-Rate and Rural Health Care programs, which typically support non-mass-market services. We note that such institutions will be included in the Digital Opportunity Data Collection's broadband availability reporting to the extent they use mass-market broadband services. We likewise disagree with the Schools, Health & Libraries Broadband Coalition that we should ignore altogether the ''mass-market/non-mass-market dichotomy'' or ''consider all anchor institutions in the mass-market category to ensure that they are all included in the Commission's broadband maps.'' Merging such disparate data into a singular coverage map amplifies the risks commenters identified of undermining future universal service programs supporting broadband deployment by making it appear as if consumer broadband services are available in areas where only non-mass market services are being offered.

22. *Collecting Speed Data for Fixed Services.* We adopt our proposal for how filers must report the maximum advertised download and upload speeds associated with fixed broadband internet access service available in an area. Specifically, for services offered at speeds below 25/3 Mbps, providers must report the speed associated with the service using two speed tiers: One for speeds greater than 200 kbps in at least one direction and less than 10/1 Mbps, and another for speeds greater than or equal to 10/1 Mbps and less than 25/3 Mbps. For speeds greater than

or equal to 25/3 Mbps, providers must report the maximum advertised download and upload speeds associated with the broadband internet access service provided in an area. AT&T and ACT—The App Association support this approach. We agree with AT&T that this approach will allow providers to consolidate data on lower speed services, which are of less immediate value to policymaking, and allow them to focus their attention on reporting faster services that are in higher demand among consumers.

23. Some commenters argued for a different number of tiers for reporting speeds below 25/3 Mbps, while others recommended that the Commission adopt a different floor for reporting broadband service in the Digital Opportunity Data Collection. We do not believe that the speed floor for reporting in the Digital Opportunity Data Collection should be raised. Even though the Commission defines terrestrial fixed broadband services with speeds of at least 25/3 Mbps as ''advanced telecommunications capability,'' millions of Americans lack access to such service but live in areas where lower-speed or non-terrestrial broadband services are available. We believe it is important to understand the types of services available in these areas, how the areas and services change over time, and to distinguish them from areas of the country that have no broadband internet access service. In addition, we believe that we should use the same speed floor used for reporting in Form 477 to maintain consistency, particularly with the subscribership reporting that will continue as part of the Form 477 data collection even after the deployment reporting is phased out.

24. Further, we believe that the two tiers proposed in the *Second Order and Third Further Notice* are appropriate to use for reporting fixed broadband service availability below 25/3 Mbps in the Digital Opportunity Data Collection. The 10/1 Mbps threshold has been important in the universal service context, as it was the minimum speed requirement adopted for Connect America Fund Phase II. Using this threshold in the Digital Opportunity Data Collection will facilitate comparing locations reported in USAC's HUBB at 10/1 Mbps or above with locations or areas reported in the Digital Opportunity Data Collection as having the same level of service. Such a comparison was adopted in the *Second Order and Third Further Notice,* and this analysis will constitute one element of the data verification process required by the Broadband DATA Act. In addition, being able to distinguish the availability of services offered at speeds between 10/1 Mbps and 25/3 Mbps versus at lower speeds will be important to the Commission's assessment of broadband for policymaking purposes and to the American public.

25. One commenter urges the Commission to require providers to report the speed and cost of the fastest offering in an area, as well as the speed and cost of the package with the highest number of subscribers. USTelecom and WISPA oppose such an approach, and we agree. Collecting the proposed pricing data is not immediately relevant to this proceeding's focus on broadband availability. Moreover, it would be premature to adopt such a filing requirement here because the Commission did not propose doing so in the *Second Order and Third Further Notice* and so has not had the opportunity to develop a record on the costs and benefits of collecting that information. In addition, the Commission's Urban Rate Survey collects broadband service pricing information from a random sample of 500 census tract–service provider pairs each year and produces thousands of unique pricing data points.

26. Next Century Cities also argues that the two speed tiers proposed in the *Second Order and Third Further Notice* ''would not adequately account for the difference between speeds advertised versus what is actually delivered to households.'' We believe that the focus of the Digital Opportunity Data Collection is to provide more granular and accurate information on where broadband service, at a reported maximum speed, is available, not to address cases where the throughput a broadband customer experiences varies from the advertised speed of the service purchased. In cases where subscribers do not purchase the maximum speed offered in an area, there would be no basis for the delivered speed to match the speed reported in the Digital Opportunity Data Collection and published in the associated broadband coverage maps. In addition, as USTelecom and WISPA note, broadband providers are already required to disclose information publicly about the expected and actual speeds of their service offerings. And in any event, the Commission already collects and publishes, through its Measuring Broadband America program, empirical data on fixed broadband speeds that a representative sample of consumers receive, and these data show that delivered speeds typically meet or exceed advertised speeds.

27. *Collecting Latency Data for Fixed Services.* We conclude it is appropriate to require all providers of fixed broadband internet access service to report latency information and to do so using the threshold proposed in the *Second Order and Third Further Notice.* Specifically, fixed broadband service providers must indicate in their semiannual Digital Opportunity Data Collection filings whether the network round-trip latency associated with each maximum speed combination reported for a particular geographic area is less than or equal to 100 ms, based on the 95th percentile of measurements.

28. In the *Second Order and Third Further Notice,* the Commission sought comment on whether and how to collect latency information for fixed broadband services. Specifically, the Commission proposed requiring all fixed broadband service providers to report latency data by indicating whether the network round-trip latency associated with the service offered by each technology and maximum speed combination in a particular geographic area is less than or equal to 100 milliseconds (ms), based on the 95th percentile of measurements. The Commission also asked whether only providers of certain types of fixed broadband service should be required to report latency data, noting that the Broadband DATA Act states that latency information shall be collected from fixed broadband providers ''if applicable'' and requires that propagation model-based coverage maps submitted by fixed wireless providers reflect the ''speeds and latency'' of the service offered by the provider.

29. The proposal in the *Second Order and Third Further Notice* to have latency reporting be limited to an indication of whether a broadband service offered is above or below 100 ms was supported by many commenters. We adopt this proposal because we believe this information is the most relevant to the Digital Opportunity Data Collection and because this approach is simple and minimizes burdens. We are not persuaded by some commenters' arguments that fixed broadband providers should be required to report more detailed latency data. First, because the 100 ms threshold is used in several high-cost universal service contexts, and because the data collected pursuant to the Broadband DATA Act must be used in determining new awards of high-cost universal service funding, it is logical to align the two. One hundred ms is the latency benchmark that recipients of Connect America Fund Phase II model-based support, as well as Connect America Fund Phase II auction support recipients in the Low Latency tier, are required to meet. Second, we believe the

benefit to consumers of collecting actual latency figures that are less than 100 ms for services that meet the 100 ms threshold is limited. Third, the burden of collecting more granular latency information is out of proportion with its limited value. As services change in the future, we can modify the threshold(s) used for reporting latency information in the Digital Opportunity Data Collection. Further, allowing providers to indicate whether the latency of their broadband service is above or below a certain threshold will alleviate the unnecessary burden and complexity for providers of having to develop a single latency value for each service area or served location and will eliminate the false precision that can arise from publishing such values.

30. We believe it is appropriate to collect latency data from all providers of fixed broadband internet access service, as proposed in the *Second Order and Third Further Notice.* In addition, we disagree with USTelecom and WISPA's argument that ''the Broadband DATA Act does not compel fixed broadband providers to report latency.'' This approach was supported by many commenters. While the Broadband DATA Act requires the Commission to collect latency information from terrestrial fixed wireless providers that submit propagation maps and propagation model data, it also gives the Commission discretion to collect latency information from other fixed broadband providers ''if applicable.'' ACA Connects and NCTA argue that latency information should be reported only by terrestrial fixed wireless and satellite providers. We disagree and believe latency reporting should apply to all fixed providers. The benefits of having this information from all fixed providers exceeds any burden on providers of reporting it, a burden that is minimal given the mechanism adopted above for reporting latency. Collecting the information from all providers will ensure consistency across fixed technologies. It also will provide the Commission and the public with basic, but useful, information about the latency associated with the highest-speed broadband service available from each fixed provider and technology at each location across the country. This information will be especially useful in the universal service context, as it will enable the Commission to assess which locations have fixed service available below 100 ms, in addition to which locations have service available above a certain speed, when making eligibility determinations.

31. *Collecting Additional Fixed Wireless Infrastructure Data.* In the *Digital Opportunity Data Collection Order and Further Notice,* the Commission asked which factors Commission staff should consider to independently validate fixed wireless mapping, including cell-site locations. Today we require fixed wireless providers that submit propagation maps and propagation model details to submit the geographic coordinates (latitude and longitude) of each base station used to provide terrestrial fixed wireless service because such information will allow us to assess the validity of their propagation maps. When a provider claims to provide coverage in an area, knowing whether its base stations are located within or near that area will allow us to assess whether the coverage is reasonable. Certain parties that provided comments in response to the *Digital Opportunity Data Collection and Further Notice* discussed the importance of transmission tower locations on service availability.

32. In the *Second Order and Third Further Notice,* the Commission adopted requirements for fixed wireless providers submitting propagation maps and propagation model details to also submit certain information related their base stations, including (1) the frequency band(s) used to provide service being mapped; (2) carrier aggregation information; (3) the radio technologies used on each band (*e.g.,* 802.11ac-derived OFDM, proprietary OFDM, LTE); and (4) the elevation above ground for each base station. While this information, in combination with the other information we are collecting from fixed wireless providers, will help us verify the accuracy of these providers' coverage maps, we also find that the base station information will be much more valuable and useful if, in addition to the elevation above ground, we have the geographic coordinates of each base station. In particular, we will be able to conduct a more accurate verification of coverage with the location information than with the height, spectrum, and radio technology alone. The geographic coordinates are an important piece of the puzzle that will make other information even more useful and applicable to our coverage verification efforts.

33. We recognize that the geographic coordinates of base stations may be sensitive information that providers may wish to keep confidential for business or national security reasons. We therefore will treat such information as presumptively confidential pursuant to Section 0.457(d) of the Commission's rules.

34. *Collecting Satellite Fixed Broadband Availability Data.* In the *Second Order and Third Further Notice,* the Commission sought additional comment on how to improve the existing satellite broadband data collection to reflect more accurately current satellite broadband service availability. The Commission asked whether it should require satellite providers to provide additional demand-side reporting, including identifying the census tracts with at least one reported subscriber or where the satellite operator is actively marketing its broadband services. One satellite operator commented, arguing that ''no changes are needed to the reporting of satellite broadband availability data because the Commission's current information is accurate.'' The satellite operator also asserts that collecting additional information would create a burden without any benefit. With respect to the collection of demand-side data, Hughes argues that the necessity of keeping such data confidential would significantly limit its utility.

35. In the absence of concrete proposals to more reasonably represent satellite broadband deployment, we will instead, as discussed in the *Second Order and Third Further Notice,* rely on other mechanisms outlined in this *Third Report and Order.* We remind satellite providers that the standards for availability reporting that apply to all fixed services require that satellite providers include only locations that they are currently serving or meet the broadband installation standard. Satellite providers cannot report an ability to serve an area or location without a reasonable basis for claiming that deployment, taking into account current and expected locations of spot beams, capacity constraints, and other relevant factors. To help ensure a better representation of satellite broadband availability, we will rely on a number of measures to verify the accuracy of the satellite data, such as crowdsourced data checks, certifications, audits, and enforcement. We will also rely on subscriber data separately reported by satellite broadband providers in assessing the accuracy of satellite provider claims of broadband availability. For instance, although the presence of actual subscribers is not a requirement for claiming deployment in an area, the presence of subscribers above a *de minimis* level in the census tract in which the census block is located may provide a useful check on the accuracy of deployment claims.

C. Standards for Collection and Reporting of Data for Mobile Broadband Internet Access Service

36. In the *Second Order and Third Further Notice,* the Commission required that a mobile provider's propagation model results for 3G, 4G, and 5G–NR mobile broadband technologies be based on standardized parameter values for cell edge probability, cell loading, and clutter that meet or exceed certain specified minimum values. The Commission also required mobile providers to submit certain propagation model details and link budget parameters. The Commission sought comment on whether to require providers to make additional disclosures concerning the input data, assumptions, and parameter values underlying their propagation models, and on adopting additional parameters including minimum values for Reference Signal Received Power (RSRP) and Received Signal Strength Indicator (RSSI). RSRP is a standard measure of reference or synchronization signal power for 4G LTE and 5G–NR technologies. RSSI is a measure of total power within the signal operating bandwidth for all technologies. The Commission also asked whether it should require mobile providers to submit additional coverage maps based on different speed, cell edge probability, or cell loading values.

37. We require mobile providers to submit, for each propagation map they submit, a second set of maps showing the RSSI or RSRP signal levels in the coverage areas for each technology. The Commission has recognized that RSRP or RSSI values may vary based on factors such as the spectrum band, network design, and device operating capabilities, but sought comment on whether it could establish a minimum signal strength parameter value, or range of values, to accommodate such variation. Requiring providers to disclose signal strength data will help Commission staff verify propagation model coverage predictions. Thus, for each 4G LTE or 5G–NR propagation map that a provider submits, the provider also must submit a second set of maps showing RSRP in dBm as would be measured at the industry-standard of 1.5 meters above ground level (AGL) from each active cell site. The RSRP values should be provided in 10 dB increments or finer beginning with a maximum value of −50 dBm and continuing to −120 dBm. These maps will be referred to as ''heat maps'' showing RSRP gradient levels as signals propagate out from the transmit antenna. This information will be made publicly available. Adopting this requirement will help the Commission verify service coverage predictions by providing a visualization of the underlying signal strength as the signal propagates. This, in turn, will enable the Commission to better ensure that consumers and policymakers have accurate information about mobile broadband coverage. The *Mobility Fund Phase II Investigation Staff Report* discussed the importance of signal strength in measuring mobile broadband performance and found a strong positive relationship between the RSRP signal strength recorded and network performance. Signal strength maps should reflect outdoor coverage only and outdoor environments should include both pedestrians using their phones and users traveling in vehicles. A second set of maps showing RSSI signal levels for each 3G propagation map a provider submits is only required in areas where 3G is the only technology the provider offers. RSRP is used in connection with 4G LTE and 5G–NR networks and not with 3G networks. Accordingly, we only require providers to show RSSI signal levels when submitting signal strength maps for their 3G services. We only require providers to submit 3G maps in areas where they do not otherwise provide 4G LTE or later generation of service. Consistent with that approach, we require mobile service providers to submit a second set of maps depicting signal levels associated with 3G service only where 3G service is the only technology the provider offers. The Broadband DATA Act imposes requirements for mapping 4G LTE and later technologies. Given this emphasis, we do not require this data for 3G service unless 3G is the only technology a provider offers in that area. No commenters opposed this approach of requiring providers to submit a second set of maps showing RSSI or RSRP signal levels.

38. We agree with the majority of commenters that, given the variety of factors that may affect signal strength, we should not adopt a standardized minimum signal strength parameter value. For example, CTIA argues that signal strength ''often fails to track actual speeds in a given geographic area.'' AT&T contends that propagation maps cannot be based on standardized signal strength ''and at the same time depict a provider's delivery of a defined service speed.'' Verizon argues that ''[b]ecause there is no single RSRP value that is always the 'correct' RSRP for a given speed target, the Commission cannot standardize a minimum RSRP value.'' CCA, by contrast, argues that ''standardizing signal strength data can improve the reliability of the coverage data and enable better comparison of maps among carriers,'' but it notes that ''mobile operators calculate minimum signal strength—and, by extension, coverage—based on a large number of variables that influence their link budget.''

39. We likewise decline to adopt any other additional propagation model parameters or to require the submission of additional link budget information. In the *Second Order and Third Further Notice,* the Commission sought comment on adopting such requirements, and in particular on whether providers should submit, as part of their link budget details, a description of sites or areas in their network where drive testing or other verification mechanisms demonstrate measured deviations from the input parameter values or output values included in the link budget(s) submitted to the Commission, and a description of each deviation and its purpose. We find that there is no evidence in the record to conclude that adopting additional parameters or requiring additional link budget information will improve the Commission's ability to understand and assess provider submissions. The Commission already requires that mobile providers' propagation model results for 3G, 4G, and 5G–NR mobile broadband technologies be based on standardized parameter values for cell edge probability, cell loading, and clutter that meet or exceed certain specified minimum values. We also require mobile providers to submit detailed link budget information, including all applicable link budgets used to design their networks and provide service at the defined speeds, and all parameters and parameter values included in those link budgets, a description of how the carrier developed its link budget(s) and the rationale for using specific values in the link budget(s), and the name of the creator, developer or supplier, as well as the vintage of the terrain and clutter datasets used, the specific resolution of the data, a list of clutter categories used, a description of each clutter category, and a description of the propagation loss due to clutter for each. We find that these requirements are sufficient to improve the accuracy, comparability, and reliability of the mobile broadband data the Commission collects and will help the Commission more fully understand and assess propagation model coverage predictions.

40. Finally, we decline to require mobile providers to submit additional coverage maps based on different speed, cell edge probability, or cell loading

values. In the *Second Order and Third Further Notice,* the Commission asked commenters to address whether there were particular use cases or categories of subscribers, such as Machine-to-Machine or Internet-of-Things users, that might benefit from information on 4G LTE or 5G–NR service availability at speeds below the thresholds set forth in the Broadband DATA Act and adopted in the *Second Order and Third Further Notice;* or whether there are use cases for which higher thresholds for broadband speed or cell loading might make sense. Several commenters oppose requiring the submission of coverage maps based on alternative parameters. T-Mobile, for example, argues that requiring the submission of additional maps would lead to consumer confusion and impose additional burdens on providers with little benefit. We agree with commenters that having different maps based on different thresholds for coverage probability or cell loading could create consumer confusion and make it more difficult for consumers to make reasonable comparisons between mobile broadband coverage area, and we decline to adopt such a requirement.

41. The majority of commenters also oppose additional parameters or requiring the submission of additional coverage maps based on different speed, cell edge probability, or cell loading values. They argue that the requirements the Commission adopted in the *Second Order and Third Further Notice* are sufficient to meet the requirements of the Broadband DATA Act and that additional parameters and/or requirements to produce additional maps are unnecessary and could lead to consumer confusion. We agree and see limited added benefits to collecting multiple coverage maps with different speeds, cell edge probabilities, and cell loading factors at this time, especially in light of the other steps we take to verify the accuracy of submitted propagation model data.

D. Engineering Certification of Semiannual Filings by Mobile and Fixed Service Providers

42. In the *Second Order and Third Further Notice,* the Commission adopted the Broadband DATA Act requirement that each provider must include a certification from a corporate officer as part of its semiannual coverage filing. The *Mobility Fund Phase II Investigation Staff Report* recommended that the Commission require service providers to include an engineering certification with all data submissions. And in the *Second Order and Third Further Notice,* the Commission proposed to require a certified professional engineer or corporate engineering officer certify to the accuracy of mobile service provider submissions and to require public filing of those certifications. Similarly, the Commission sought comment on whether to require an engineering certification for semiannual filings for fixed broadband service providers and on whether to establish penalties for violating the certification requirement.

43. We require each mobile and fixed service provider to submit certifications of the accuracy of its submissions by a qualified engineer. Such certifications are in addition to the corporate officer certifications required by the *Second Order and Third Further Notice,* but if a corporate officer is also an engineer and has the requisite knowledge required under the Broadband DATA Act, a provider may submit a single certification that fulfills both requirements. An engineering certification must state that the certified professional engineer or corporate engineering officer is employed by the service provider and has direct knowledge of, or responsibility for, the generation of the service provider's Digital Opportunity Data Collection coverage maps. The certified professional engineer or corporate engineering officer shall certify that he or she has examined the information contained in the submission and that, to the best of the engineer's knowledge, information, and belief, all statements of fact contained in the submission are true and correct, and in accordance with the service provider's ordinary course of network design and engineering.

44. Several commenters supported our proposal to require engineering certifications. For example, AT&T and WTA supported the Commission's proposal to require providers to submit an engineering certification with their submissions. NTCA also generally supported the proposal, but suggested that the Commission not require providers to employ a new in-house engineer for the sole purpose of certifying data submissions and to limit the requirement to semiannual filings.

45. Others, however, argue that requiring providers to include an engineering certification would be overly burdensome and should not be adopted. We are not persuaded that an engineering certification is too burdensome or costly given the importance of ensuring the accuracy of coverage maps and that they be based on data that are consistent with professional engineering standards. The Broadband DATA Act makes clear the importance that Congress places on collecting accurate broadband deployment data, and the reporting standards the Commission has adopted for all technologies in the Digital Opportunity Data Collection will require filers to evaluate new, more stringent technical issues than have been required in reporting on FCC Form 477. We find that requiring that an engineer review and certify the accuracy of a providers' submissions is an appropriate measure to confirm that filers have in fact engaged in the analysis necessary to meet Congress's objective of developing more accurate data. Given that this analysis is already required, certifying that it has been conducted will not result in any significant additional burden for filers.

46. The Commission also sought comment on potential penalties for violating the engineering certification requirement by omitting and/or falsely certifying it. Consistent with the current Form 477 rules, the Commission will enforce compliance and assess penalties for materially inaccurate or incomplete Digital Opportunity Data Collection filings, including failure to file the required corporate officer and engineering certifications.

E. Verifying Broadband Availability Data Submitted by Providers

47. The Broadband DATA Act requires the Commission to verify the accuracy and reliability of the broadband coverage data that providers submit to the Commission. In carrying out this requirement, we adopt provisions to ensure that the coverage data in the Digital Opportunity Data Collection are as credible and reliable as possible. The Office of Economics and Analytics (OEA) and WTB may request and collect the data on a case-by-case basis only where staff have a credible basis for verifying the provider's coverage data. In response to such verification requests, mobile service providers must submit either infrastructure information or on-the-ground test data for where the provider claims to provide coverage. In addition to submitting either infrastructure or on-the-ground test data, the provider may submit additional data that the provider believes support its coverage, such as data collected from its transmitter monitoring systems and software. At the time of the adoption of this Order, we define on-the-ground test data as drive test data. OEA, however, may determine in the future that there are other types of on-the-ground test data that are sufficient to substitute for drive test data. Mobile providers urge the Commission to provide flexibility in the types of data that can be submitted for verification purposes. Several

commenters suggest that we permit providers to submit data collected from their network monitoring systems and software in response to a verification request. We find that the record does not support a finding that such data currently are sufficient to permit such data to substitute for requiring either on-the-ground testing or infrastructure data in response to a verification investigation. However, we direct OEA and WTB to review such data to the extent they are voluntarily submitted by providers or in response to verification investigations or to requests from staff. To the extent staff concludes that such methods are sufficiently reliable, we direct OEA and WTB to specify appropriate standards and specifications for such data and add it to the alternatives available to providers to respond to verification investigations. In so directing OEA and WTB to make such a determination, we specifically recognize that such an analysis may lead it to expand the options available to providers for responses with respect to verification investigations but not do so for other purposes, including responses to consumer challenges and/or governmental and other entity challenges. Although a provider may choose to submit either infrastructure or on-the-ground data in a response to a verification inquiry, OEA and WTB are authorized to require the submission of additional data if it finds such data would assist the Commission in verifying coverage in a particular area where the infrastructure or on-the-ground data submitted by the provider is insufficient to verify the coverage shown on the provider's map.

48. We direct OEA and WTB to implement this data collection and to adopt the methodologies, data specifications, and formatting requirements that providers shall follow when collecting and reporting mobile infrastructure and on-the-ground test data to the Commission. We direct OEA and WTB to provide guidance about what types of data will likely be more probative in different circumstances. We find that directing OEA and WTB to adopt the methodologies, specifications, and formatting information will provide greater flexibility to adjust and improve our collection process over time once the Commission has had an opportunity to review the data submitted by mobile service providers and to begin the verification process required under the Broadband DATA Act.

49. Second, we adopt standards for collecting verified broadband data from State, local, and Tribal mapping entities and third parties that meet certain criteria. Specifically, we establish details associated with the meaning of ''verified'' data, how to reconcile conflicts between these data and data in semiannual provider filings, collecting verified data for mobile service, and the parameters of the Commission's public interest determination to use broadband data from third parties.

1. Verifying Mobile Data

50. In response to a Commission staff inquiry to verify a mobile service provider's coverage data, we require on a case-by-case basis that the provider submit either infrastructure information or on-the-ground test data for where the provider claims to provide coverage. A provider has the option of submitting additional data, including but not limited to on-the-ground data or infrastructure data (to the extent such data are not the primary option chosen by the provider), or other types of data that the provider believes support its coverage. The mobile provider has 60 days from the time of the request by OEA and WTB to submit, at the provider's option, infrastructure or on-the-ground data and any additional data that the provider chooses to submit to support its coverage. OEA and WTB may require submission of additional data (*e.g.,* on-the-ground test data if the provider initially submitted infrastructure data) if such data are needed to complete its verification inquiry. Should OEA and WTB require further data from the provider, the provider shall submit such data no later than 60 days from the time of that request.

51. *Collecting Infrastructure Information from Mobile Providers.* The Broadband DATA Act requires that the Commission establish ''processes through which the Commission can verify the accuracy of data'' that mobile providers submit. In the *Second Order and Third Further Notice,* the Commission reiterated that infrastructure data could advance that requirement under the Broadband DATA Act and stated that such information could help Commission staff verify the accuracy of provider coverage propagation models and maps submitted by mobile providers. The *Second Order and Third Further Notice* sought to refresh the record and requested further comment on collecting infrastructure information from mobile wireless service providers as part of the Digital Opportunity Data Collection. In particular, the Commission sought comment on whether to collect infrastructure data, what information to collect, how often to collect it, and whether to collect it on a regular basis or only on staff request. In seeking comment on these issues, the Commission recognized that such collection of infrastructure data could raise commercial sensitivity and national security concerns.

52. In light of the Broadband DATA Act requirements and our review and analysis of the record (including the *Mobility Fund Phase II Investigation Staff Report*), we find that infrastructure information can provide an important means for the Commission to fulfill its obligation to independently verify the accuracy of provider coverage propagation models and maps. Examples of infrastructure information that mobile providers may be required to submit as part of a verification inquiry include the following: (1) The latitude and longitude of cell sites; (2) the site ID number for each cell site; (3) the ground elevation above mean sea level (AMSL) of the site (in meters); (4) frequency band(s) used to provide service for each site being mapped including channel bandwidth (in megahertz); (5) the radio technologies used on each band for each site; (6) the capacity (Mbps) and type of backhaul used at each cell site; (7) the number of sectors at each cell site; and (8) the Effective Isotropic Radiated Power (EIRP, in dBm) of the sector at the time the mobile provider creates its map of the coverage data. For example, 802.11ac-derived OFDM, proprietary OFDM, LTE Release 13, and NR Release 15. In response to the Commission's requests for comment in the *Digital Opportunity Data Collection Order and Further Notice,* CTIA and AT&T supported requiring mobile providers to submit these first five types of infrastructure information. We define ''backhaul capacity'' as the connection capacity from the radio site to the network. Mobile providers submitting infrastructure information must do so within 60 days of receiving a request from Commission staff. In the *Digital Opportunity Data Collection Order and Further Notice,* the Commission sought comment on its proposal to require that a provider submit its infrastructure information within 30 days of a Commission request. In response to this proposal, certain providers asserted that the Commission require more than 30 days to respond to a Commission request.

53. We agree with the conclusion in the *Mobility Fund Phase II Investigation Staff Report* that infrastructure information can be used to verify mobile broadband coverage. In the *Mobility Fund Phase II Investigation Staff Report,* staff recommended that detailed information on propagation model parameters and deployed infrastructure

needed to be collected in order to verify fully the engineering assumptions inherent in mobile coverage maps created using propagation modeling. We further conclude that collecting such data will enable the Commission to satisfy the Broadband DATA Act's requirement that the Commission verify the accuracy and reliability of submitted coverage data.

54. Several commenters support the Commission's collection of infrastructure information from mobile providers on a case-by-case basis for particular purposes. The City of New York, however, asserts that the Commission should require that mobile providers submit infrastructure information on a regular basis. The Massachusetts Department of Telecommunications and Cable (MDTC) contends that collecting mobile infrastructure data is critical to analyzing whether areas have adequate mobile broadband access. T-Mobile and CTIA assert that, if there is an issue regarding a mobile provider's coverage data that was identified in the challenge process or by other verification tools, the Commission could request targeted infrastructure information, such as cell site locations. Verizon contends that speed test data and infrastructure data should be used for case-by-case verification in small areas when other verification methods have identified a potential issue, such as when crowdsourced data or a third-party challenge has indicated a potential problem with the coverage map's accuracy. AT&T argues that the Commission should consider collecting either the propagation model calibration report statistics for each propagation map submitted to the Commission or the five specific types of infrastructure data. Verizon asserts that the Commission could give the mobile service provider the option of providing infrastructure data or speed test data to verify the accuracy of its map.

55. In the *Second Order and Third Further Notice,* the Commission recognized that the collection of mobile network infrastructure information could raise commercial sensitivity and national security concerns. In response to the Commission's request for comment, several commenters agree and assert that the disclosure of infrastructure information could lead to competitive harm to mobile service providers and could compromise the security of providers' cell sites. In particular, Verizon argues that infrastructure data is commercially sensitive because it reveals the design of a provider's network. Verizon also asserts that the risk of disclosing a complete database of a provider's network infrastructure raises significant national security concerns because it could give hostile actors a roadmap to the nation's critical communications infrastructure. We are sensitive to those confidentiality and security concerns and will therefore treat all of the mobile infrastructure information submitted by providers at the request of Commission staff, including the location of cell sites, as presumptively confidential.

56. Certain commenters express concern that producing mobile network infrastructure data could be unduly burdensome. To avoid imposing excessive burdens, we do not mandate submission of such data in response to every Commission verification inquiry. Instead, mobile service providers, in the alternative, may submit on-the-ground testing data to support their coverage maps in response to staff verification requests. These test data provide another means by which the Commission can undertake its verification responsibilities. Thus, providers may choose whether to submit infrastructure information or on-the-ground test data based on the responding provider's evaluation of which type of submission will be the most probative and least burdensome. The requirement to submit either infrastructure information or on-the-ground test data constitutes a critical element of our ability to verify provider coverage data.

57. *Collecting On-the-Ground Test Data from Mobile Providers.* In the *Second Order and Third Further Notice,* the Commission proposed requiring mobile providers to submit on-the-ground test data (*i.e.,* both mobile and stationary drive-test data) as another means to verify mobile providers' coverage maps, and specifically proposed collecting a statistically valid sample of on-the-ground data. The Commission sought comment on ways to develop a statistically valid methodology for the submission and collection of such data as well as how to implement such a requirement in a way that is not cost prohibitive for providers, particularly for small service providers. Further, in the *Second Order and Third Further Notice,* the Commission requested comment on whether Commission staff should develop a statistically valid methodology that would be used for determining the locations and frequency for on-the-ground testing as well as the technical parameters for standardizing on-the-ground data.

58. Commenters agree on the verification requirements of the Broadband DATA Act but disagree on the most appropriate mechanisms for verifying mobile coverage. The majority of commenters oppose requiring on-the-ground testing as part of a verification process. Opponents assert that on-the-ground testing would be enormously expensive. Service providers argue that the Commission should refrain from mandating on-the-ground testing and instead review carrier submissions and request additional documentation from a service provider to clarify any perceived issue. In contrast, the Vermont Department of Public Service (VTDPS) argues that the collection of on-the-ground test data from providers is a critical component of the verification process and is consistent with the Broadband DATA Act. We agree with VTDPS that on-the-ground test data can be a valuable method for verification. We find, however, there must be an appropriate balance between verifying coverage and recognizing the challenges of on-the-ground testing in various geographic areas. We find that the case-by-case approach we adopt here preserves the Commission's ability to use on-the-ground data for verification while reducing the burdens associated with requiring submission of on-the-ground data on a regular basis. On-the-ground testing and infrastructure data generally provide valuable methods for verifying coverage data. However, neither may be conclusive in certain cases particularly in rural areas with challenging terrain; thus, we preserve the opportunity to request additional data. We agree with those commenters that argue that a flexible approach is needed and find that a case-by-case approach appropriately balances the need to verify coverage and the cost of doing so. Thus, similar to the collection of infrastructure data described above, we adopt a framework for the collection of on-the-ground data from mobile service providers that submit on-the-ground test data in response to a request by Commission staff for verification data. Connected Nation argues that the Commission should require mobile service providers to submit on-the-ground test data representing a combination of mobile and stationary tests. Like infrastructure data, we find that on-the-ground testing can provide an effective means for the Commission to investigate the accuracy of the mobile broadband coverage maps submitted to the Commission.

59. In the *Second Order and Third Further Notice,* the Commission sought comment on how to ensure that providers submit a statistically valid and unbiased sample of on-the-ground tests. We agree with commenters that

argue that the process of establishing a statistically valid sample may differ from carrier to carrier and that there should be some flexibility in the Commission's determination of an appropriate location for statistical sampling. AT&T asserts that the *Second Order and Third Further Notice* lacks guidance as to what is meant by the ''area tested,'' argues that this is susceptible to many possible interpretations, and notes the difficulty in creating statistically valid samples for particular geographic areas given the variability of the terrain across the nation. CCA argues that a statistically significant sample should account for variations in terrain, foliage, and potentially clutter. We therefore direct OEA,WTB, and OET to develop and administer the specific requirements and methodologies that providers must use in conducting on-the-ground-tests, including the geographic areas that must be subject to the on-the-ground testing so that the tested areas satisfy the requirements of a statistically valid and unbiased sample of the provider's network. Additionally, we direct OEA, WTB, and OET to approve the equipment that providers may use, including the handsets and any other special equipment necessary for the testing and other parameters necessary to obtain a statistical sample of the network. In eliminating the requirement to submit separate Form 477 coverage maps by spectrum band, the Commission acknowledged that it had not yet used such data to analyze deployment in different spectrum bands and that such data were unnecessary to confirm buildout requirements or to determine deployment speeds, as such information was typically provided by mobile providers through other means. For on-the-ground test data, however, spectrum band data are essential to understanding and analyzing mobile providers' on-the-ground submissions, including measurement data and network performance, because signal strength values may vary based on the particular band in use. Further, we direct OEA, WTB, and OET to take into account the lessons learned from *Mobility Fund Phase II Investigation Staff Report* when it specifies the on-the-ground testing requirements. Further, we direct that OEA, WTB, and OET approve the number and location of the mobile and stationary tests required to accurately verify the coverage speed maps.

60. A mobile provider submitting on-the-ground test data in response to a Commission staff verification request shall submit such data within 60 days of receiving the request. As with the submission of infrastructure data, we find that 60 days is an appropriate time period for providers to submit on-the-ground test data. This time period will also ensure a speedy resolution of the verification process and consistency with the challenge process. In the *Second Order and Third Further Notice,* the Commission also requested comment on whether it should treat on-the-ground test data as confidential. We agree with commenters that publicly available on-the-ground test data is in the public interest because it ensures that the most accurate data are collected and reported and ultimately benefit consumers.

2. Collecting Verified Data From Government Entities and Third Parties

61. The Broadband DATA Act requires the Commission to develop a process through which it can collect verified data for use in the coverage maps from: (1) State, local, and Tribal governmental entities primarily responsible for mapping or tracking broadband internet access service coverage in their areas; (2) third parties, if the Commission determines it is in the public interest to use their data in the development of the coverage maps or in the verification of data submitted by providers; and (3) other federal agencies. In the *Second Order and Third Further Notice,* the Commission adopted this requirement and directed the Bureaus and Offices to implement the details of the process. The Commission stated that it will treat such data as ''primary'' availability data ''for use in the coverage maps'' on par with the availability data submitted by providers in their semiannual Digital Opportunity Data Collection filings. We disagree with Connected Nation's objection to our treatment of such data as ''primary source data.'' We note that, contrary to Connected Nation's contention, Congress directed the Commission to ''develop a process through which the Commission can collect *verified* data *for use in the coverage maps.*'' The Commission sought comment in the *Second Order and Third Further Notice* on other details associated with the process, including the meaning of ''verified'' data, how to reconcile conflicts between these data and data in semiannual provider filings, collecting verified data for mobile service, and the parameters of the Commission's public interest determination to use broadband data from third parties.

62. First, we conclude that coverage data from these government entities and third parties will be verified for purposes of incorporating into coverage map data when they bear certain indicia of credibility. Regarding fixed broadband coverage data submitted by government entities and third parties, we agree with USTelecom that (once complete) the location data in the Fabric will become the standard for evaluating the credibility of such data. Specifically, we evaluate the credibility of such data by analyzing the source of the data and the steps that the submitter took to gather and verify the data: (1) Are the data submitted by an entity that specializes in gathering and/or analyzing broadband availability data; and (2) is the submitter able to demonstrate that it (or the entity acting on its behalf) has employed a sound and reliable methodology in collecting, organizing, and verifying the availability data it is submitting. We will not accept broadband coverage data that are submitted by government entities and third parties that do not meet these parameters.

63. To the extent they choose to file verified data, government entities and third parties must file their broadband availability data in the same portal and under the same parameters as providers (*e.g.,* formatting requirements, required information, certifications). We note the concern of the Illinois Office of Broadband that the Commission not require state, local, or Tribal entities to submit or verify broadband availability data according to any particular schedule. While we are not requiring government entities to submit broadband availability data at every semiannual deadline required for providers to submit their data, to the extent such entities do have data to submit, they must do it by one of the semiannual filing deadlines. We also agree with NCTA that, to be relevant, the timeframes of the third-party verified data should match the timeframes of the data submitted by providers ''or new broadband deployments will not be represented.'' For example, government entities and third parties must generate availability data as a fixed broadband availability polygon, mobile propagation map, or list of locations depending on whether the data concern terrestrial wired, satellite, fixed wireless, or mobile service. In addition, submitters must disclose the methodologies they used to produce their data. We disagree with NCTA's request that ''[d]ata based on large geographic areas, such as statewide data, must include all broadband providers in the relevant area to be informative.'' The Broadband DATA Act has no such limitation; we find instead that the Act requires the

Commission to establish a process to encourage the submission of verified third-party broadband data, and we refrain from reading the limitation proposed by NCTA into the Act.

64. We will not accept data that government and third-party entities have simply collected directly from providers and are passing along to us without any attempt to verify the data. We note the concern of the Illinois Office of Broadband that, while a governmental agency may collect broadband availability data itself using its own personnel and resources, more commonly ''the data are likely to be gathered by a reputable contractor pursuant to a valid contract with a state, local, or Tribal government [entity].'' The Illinois Office of Broadband asserts that ''[w]hile such data are highly likely to be reliable, the governmental entity itself is unlikely to have the direct personal knowledge of the contractor's data gathering and verification process that would be necessary to support an attestation.'' According to the Illinois Office of Broadband, ''[i]n such cases, no attestation should be required from the governmental entity submitting the data or, in the alternative, any attestation should be limited to the fact that the data were gathered pursuant to a valid contract with a governmental entity, and that the governmental entity submitting the data has no cause to question their reliability.'' We disagree. We find that a certification requirement for such entities akin to that required of providers under section 802(b)(4) of the Broadband DATA Act will help ensure the reliability of the data. Where government entities rely on third parties (*e.g.,* consultants, commercial entities, and the like) to collect broadband availability data for them, the government entities can supplement their certifications by describing the third party providing the data (*e.g.,* does it specialize in gathering and/or analyzing broadband availability data) as well as the methodology the third party employed in collecting, organizing, and verifying the availability data provided.

65. We will publish the verified availability data collected from government entities and third parties as a layer on the relevant coverage maps. In addition, we require service providers to review the verified data submitted in the online portal, work with the submitter to resolve any coverage discrepancies, make any corrections they deem necessary based on such review, and submit any updated data to the Commission within 60 days after being notified by the online portal that data has been submitted by the government entity or third party. However, we disagree with Connected Nation that any corrections made to the public-facing maps ''should be as a result of FCC-directed validation/verification efforts—not as a result of any resolution or reconciliation process between submitting entities and the service providers themselves. We believe such a process would be cumbersome, and would actually discourage third-party entities from submitting data.'' While some corrections to the broadband coverage maps could be made as a result of Commission-directed validation efforts arising from the analysis of government or third-party data, we believe that a review and potential reconciliation of data between providers and third-party/government submitters will help improve the accuracy of the public-facing coverage maps without imposing undue additional burdens on submitters. We find that 60 days is an appropriate time for providers to review government and third-party data, work with the submitter, and determine whether any updates must be made to their existing broadband availability data. This time period mirrors the timing for providers to respond to challenges. As we note in adopting the challenge process, permitting 60 days for provider action will help ensure that the process is manageable for providers while also providing for speedy resolution of any discrepancies.

66. If the provider does not agree with the data submitted by the government entity or third party, then the provider need not include such data as part of its broadband data submissions and the data will not be reflected in the broadband coverage maps. If a government entity or third party does not agree with the provider's treatment of the data, they have the option of filing the data as part of a challenge to the provider's availability data via the challenge portal. Such challenges will be addressed via the respective fixed and mobile challenge process procedures.

67. *Collecting Verified Data on Mobile Service from Government Entities and Third Parties.* The *Second Order and Third Further Notice* sought comment on how to collect voluntarily-submitted verified on-the-ground data on mobile service from state, local, and Tribal governmental entities, third parties, and Federal agencies for use in the mobile coverage maps the Commission will create. The Commission also sought comment on a pilot program to collect information to verify mobile providers' coverage data to meet the Broadband DATA Act's mandate of establishing a process that tests the feasibility of partnering with Federal agencies that operate delivery fleet vehicles, including the United States Postal Service (USPS). Section 644(b)(2)(B) of the Broadband DATA Act requires the Commission, within one year of the Act's enactment, to ''conclude a process that tests the feasibility of partnering with Federal agencies that operate delivery fleet vehicles, including the United States Postal Service, to facilitate the collection and submission'' of data that can be used to verify and supplement broadband coverage information.

68. Consistent with the Commission's obligations under the Broadband DATA Act, we direct OEA to collect verified mobile on-the-ground data through a process similar to the one established for providers making their semiannual Digital Opportunity Data Collection filings. If a government entity or third party chooses to submit mobile verified data, we require it to submit such data, as set forth above, through the same online portal created for providers making their semiannual Digital Opportunity Data Collection filings. In submitting these data, the government entity or third party should include a description of relevant methodologies, specifications, and other relevant details that the Commission should consider in reviewing these verified mobile data. We also require government entities and third parties submitting verified mobile data to certify that the information it is submitting is true and accurate to the best of their actual knowledge, information, and belief.

69. We direct OEA and WTB to investigate a pilot program that tests the feasibility of partnering with the USPS or other federal agencies to collect information to verify and supplement broadband information submitted by mobile providers. With Congress's recent appropriation of funding for the Commission to implement the Broadband DATA Act, we will consider appropriate steps to initiate such a pilot program with the USPS or another federal agency to collect information to verify and supplement the broadband data submitted by mobile providers. Connected Nation supports the Commission's proposal to move forward with a pilot program with the USPS and urges the Commission to focus primarily on rural areas for purposes of the feasibility study.

F. Fixed Service Challenge Process

70. The Broadband DATA Act requires the Commission to adopt a user-friendly challenge process through which consumers, State, local, and

Tribal governmental entities, and other entities or individuals may submit challenges to the accuracy of the coverage maps, broadband availability information submitted by providers, or information included in the Fabric. This requirement aligns with the Commission's recognition in the *Digital Opportunity Data Collection Order and Further Notice* that ''input from the people who live and work in the areas that a service provider purports to serve also plays a vital role in ensuring the quality of these maps, helping to identify areas where the data submitted do not align with the reality on the ground.'' In adopting the challenge process, the Commission must take into consideration: (1) The types and granularity of information to be provided in a challenge; (2) the need to mitigate time and expense in submitting or responding to a challenge; (3) the costs to consumers and providers from misallocating funds based on outdated or inaccurate information in coverage maps; (4) lessons learned from comments submitted in the Mobility Fund Phase II challenge process; and (5) the need for user-friendly submission formats to promote participation in the process. The process also must include the verification of data submitted through the challenge process and allow providers to respond to challenges to their data. Also, pursuant to the Broadband DATA Act, the Commission must develop an online mechanism for submitting challenges that is integrated into the coverage maps, allows an eligible entity or individual to submit a challenge, makes challenge data available in both GIS and non-GIS formats, and clearly identifies broadband availability and speeds as reported by providers. The rules establishing the challenge process also must include processes for the speedy resolution of challenges and for updating the Commission's coverage maps and data as challenges are resolved.

71. In the *Second Order and Third Further Notice,* we proposed to make the online mechanism for receiving and tracking challenges accessible through the same portal proposed for accepting crowdsourced submissions. We also proposed that the system provide easy, direct access to the challenge data as well as broadband availability data. Several commenters support this approach and no commenters opposed it. We find that establishing a single platform for submitting challenges and crowdsourced information that clearly delineates between the two functions will promote access and reduce the potential for confusion by users. We therefore adopt this approach.

1. Consumer Challenges to Fixed Broadband Internet Access Service and Fabric Data

72. *Challenges to Service Availability and Coverage Map Data.* We adopt the proposal regarding the collection of information from consumers seeking to challenge coverage map data or the availability of service at a particular location. Specifically, we require consumers submitting such a challenge to include: (1) The name and contact information of the challenger (*e.g.,* address, phone number, and/or email address); (2) the street address or geographic coordinates (latitude/longitude) of the location(s) at which the consumer is disputing the availability of broadband internet access service; (3) a representation that the challenger owns or resides at the location being disputed or is otherwise authorized to request service there; (4) the name of the provider whose coverage is being disputed; (5) the category of dispute, chosen from pre-approved options in the online portal—*e.g.,* whether the challenge asserts there is no service offering at location, the provider failed to install a functioning service within ten business days of valid order for service, the provider denied the request for service, reported speed not offered; (6) for customers or potential customers challenging availability data or the coverage maps, text and documentary evidence and details of a request for service (or attempted request for service), including the date, method, and content of the request and details of the response from the provider, while for non-customers challenging availability or the coverage maps, evidence showing no availability at the disputed location (*e.g.,* screen shot, emails); and (7) a certification from an individual, or an authorized officer or signatory if an entity, that the person examined the information contained in the challenge and that, to the best of the person's actual knowledge, information, and belief, all statements of fact contained in the submission are true and correct, including certifying to each challenge location if there are challenges to multiple locations at once. The challenge process proposed for fixed service availability and coverage map data is designed to allow consumers and other parties to challenge whether coverage maps accurately reflect the *availability* of broadband service from a particular provider using the technology and at the maximum advertised speeds reported by the provider. This challenge process is not meant to address disputes that subscribers have with their broadband provider about quality of service issues, such as network performance experienced at a particular location. When collecting, storing, using, or disseminating personally identifiable information in connection with the challenge process described here, the Commission will comply with the requirements of the Privacy Act of 1974, 5 U.S.C. 552(a).

73. Commenters generally expressed support for requiring consumers to submit this information when seeking to challenge coverage map data or availability of service. Commenters also support the Commission's adoption of its proposal to require that challengers certify in their filings that all statements of fact contained in the submission are true and correct. We moreover agree with commenters arguing that all fields of requested information must be completely filled in for a challenge to be considered complete and for a provider to be required to respond and will accordingly make this a feature of the challenge portal.

74. While some commenters express concerns regarding the amount of information consumers will need to submit and the risk of creating a burdensome process for consumer challenges, we find that collecting the required information will promote fairness in the challenge process by ensuring that providers receive information necessary to identify each challenged location and the basis for each challenge. We conclude that collecting this information would appropriately balance the respective burdens on challengers and providers, facilitate challenge participation, and enable us to adequately verify the information collected, as required by the Broadband DATA Act. We also find that this process will appropriately inhibit the submission of frivolous or malicious filings. We note that in the *Digital Opportunity Data Collection Order and Further Notice,* we directed USAC to develop mechanisms in the Digital Opportunity Data Collection to prevent malicious or unreliable filings.

75. We also adopt the proposal from the *Second Order and Third Further Notice* that, once a challenge is submitted to the Commission's online portal, the portal should automatically notify a provider that a challenge has been filed against it. Commenters do not oppose this proposal. Accordingly, we find that sending an automatic notification to providers would promote active engagement, awareness, and responsiveness by providers as well as comply with the Broadband DATA Act,

which requires the Commission to allow providers to respond.

76. Several commenters express concerns regarding the pre-established options proposed for consumer challenges in the *Second Order and Third Further Notice* and identified here. We first address NCTA's request that the Commission clarify the category of ''reported speed not available'' that ''speed test results alone are not sufficient to warrant the submission of a challenge.'' In support of its request, NCTA explains that ''a consumer should have to provide other evidence to support the claim that the speed reported by the broadband service provider is not available at that location'' such as ''documentation demonstrating that the customer attempted to subscribe to the service speed reported by the provider and was unable to do so.'' We acknowledge NCTA's concerns and clarify that the challenge process is intended to shed light on whether the reported speed is actually offered in the marketplace. We otherwise find that the identified categories of disputes will allow consumers an efficient way to assert a variety of disputes and that collecting such data is necessary to comply with the Broadband DATA Act's requirement that we verify the accuracy and reliability of submitted coverage data.

77. Second, USTelecom and others assert that the categories of dispute options are overly broad and may result in unfounded challenges. In particular, these commenters argue that the categories ''provider failed to install within 10 days of a valid order'' and ''installation attempted but unsuccessful'' could result in unfounded challenges unrelated to availability. According to USTelecom, ''while a provider's inability to offer service within ten business days is a denial of service, a delay in installation due to scheduling or other unforeseen circumstances that results ultimately in installation outside the ten-day window is not a denial of service.'' USTelecom argues that ''unforeseen circumstances can delay installation beyond 10 days but wouldn't show an inability to provide service.'' USTelecom and WISPA also argue that an ''unsuccessful installation'' could be the result of extenuating circumstances, outside of the control of the provider and should not be an option for challengers to assert. WTA similarly argues that ''provider failed to install within 10 business days'' and ''installation(s) attempted but unsuccessful'' are not clearly and wholly related to service availability, and can involve ''lack of customer cooperation, inadequacy of customer premises equipment, and weather disruptions.'' WTA also asserts that these categories ''are better and more appropriately'' addressed through the Commission's informal section 208 complaint process. Section 208 complaints against common carriers related to rates, terms, and conditions can be filed in an informal and formal complaint process, but that process is separate from, and not applicable to, the challenge process—a statutory requirement under the Broadband DATA Act.

78. We disagree. The Broadband DATA Act specifically requires the Commission to develop a challenge process through which consumers can challenge the accuracy of the coverage maps, broadband availability information submitted by providers, or information included in the Fabric. Indeed, the ability to install service within 10 business days of a customer request is a fundamental component of reporting availability for purposes of the Digital Opportunity Data Collection, and consumers naturally must have the opportunity to challenge assertions of coverage on that basis. It is because of such categories that we can ensure ''input from the people who live and work in the areas that a service provider purports to serve also plays a vital role in ensuring the quality of these maps, helping to identify areas where the data submitted do not align with the reality on the ground.''

79. We recognize that there may be instances in which it is not possible for a provider to meet the 10 business-day standard for reasons beyond its control, but in those cases, a provider will have an opportunity to submit facts to demonstrate that that was, or continues to be, the case. Additionally, we will ask challengers, in initiating a challenge, to report on whether the provider has initiated service at their location after initially failing to do so within 10 business days. Where the information submitted by the parties to the challenge shows coverage has been initiated, we will not remove the location from reported coverage in the broadband maps, but information about the extent to which locations reported as covered are not served within 10 business days, and the reasons therefor, will be useful in assessing the coverage data generally and possibly with regard to providers individually.

80. *Dispute Resolution.* We adopt the proposal for a multi-step dispute resolution process, with certain slight modifications. Specifically, upon the filing of a challenge containing all required elements, we will designate the subject location in the public coverage maps as ''in dispute/pending resolution'' until the challenge is resolved. This departs from the proposal to designate a location as ''in dispute/pending resolution'' in the public maps once the affected provider submitted an objection to the challenge. We find that making this designation when the challenge is made will better reflect the status of the coverage data in the map rather than waiting for a provider's response to make such a designation, and give due weight to the fact that the challenger has certified to all requisite information to lodge a challenge.

81. In the *Second Order and Third Further Notice,* the Commission sought comment on its proposal to require a provider to submit a reply to a challenge in the online portal within 30 days of being notified of the challenge. The Commission also sought comment on its proposal that a provider's failure to submit a reply within the required period would result in the subsequent removal of the location from the Commission's official coverage map, and the Commission sought comment on any alternative approaches. Connected2Fiber and NRECA propose that the Commission adopt a 30-day response time for providers, and NRECA also argues for the adoption of a "'sliding scale'" response time that would allow more time for a provider to respond when a challenge ''covers more locations.'' The record, however, overwhelmingly supports NTCA's proposal for a 60-day reply period for providers. For example, ACA Connects agrees with USTelecom and NTCA that ''a 30-day response deadline would place significant burdens on providers, particularly smaller providers that lack the personnel and resources to dedicate to handling DODC challenges.'' Connected Nation, while it agrees with the 30-day reply period, similarly expresses concern ''with the burden that such a requirement would place on service providers—particularly small providers—and the Commission itself, and that such a process may be overly cumbersome.''

82. We agree with commenters that the challenge process is likely to result a large volume of data to analyze and that permitting 60 days to respond to a challenge, rather than the proposed 30 days, balances the need to ensure that the challenge process is manageable for providers, while also providing for prompt resolution of challenges. We therefore adopt this approach. We decline to adopt a sliding-scale approach, finding that this would add unnecessary complexity to the process and could result in confusion to

challengers and providers as to which deadlines applied.

83. We also adopt the following substantive requirements for providers' replies to availability or coverage map challenges. Specifically, a provider must reply by either: (1) Accepting the assertions raised by the challenger, in which case the provider must submit a correction for the challenged location in the online portal within 30 days of its portal reply; or (2) denying the challenger's assertions, in which the case the provider must provide evidence in its reply that the provider serves, or could and is willing to serve, the challenged location. To the extent a provider has several corrections to be made to its broadband availability data, it can batch them together, but any correction must meet the 30-day deadline.

84. In the case where a provider disagrees with the challenger's assertions, the provider will have 60 days from the date of its reply in the online portal to resolve the dispute with the challenger. If the parties are unable to reach consensus within that time, the provider must report the outcome of efforts to resolve the dispute through the online portal, after which Commission staff will review the evidence and make a determination of whether the provider has demonstrated it is offering service at that location. The service provider must demonstrate to Commission staff that by the preponderance of the evidence, it in fact offers service at that location consistent with the requirements of the Digital Opportunity Data Collection. When staff find in favor of the challenger, the provider must remove the specified location from its coverage polygon or customer list within 30 days of the decision. When staff find in favor of the service provider, the location will no longer be subject to the ''in dispute/pending resolution'' designation on the coverage maps.

85. A provider's failure to timely respond to a challenge will result in a finding for the challenger and mandatory corrections to the provider's Digital Opportunity Data Collection information as requested by the challenger. Providers must submit any such corrections within 30 days of the missed reply deadline or the Commission will make the corrections on its own.

86. We adopt the proposal to use the ''preponderance-of-the-evidence'' standard in resolving disputes between consumer challengers and providers, with the challenger required to demonstrate initially facts indicating that a location is most likely unserved. The challenger makes its initial showing by submitted a completed, certified challenge in the online portal. After this initial showing, the burden will shift to the provider to rebut the challenge by a preponderance of the evidence. In the *Second Order and Third Further Notice,* the Commission explained that based on a preponderance-of-evidence evidentiary standard, the Commission would weigh whether the service provider has subsequently shown by the greater weight of the evidence that it makes service available at the challenger's location.

87. A number of commenters argue either that the Commission should adopt a ''clear and convincing'' evidentiary standard or that the burden of proof should be on the challenger at all times, or both. USTelecom and WISPA, in addition to these measures, argue that ''a provider should be entitled to a presumption that its data is accurate (or more so) than the challenger, especially where it is subject to enforcement sanctions as the regulated entity.'' We find that adopting a heightened burden of proof would place too high of a burden on consumers in making and prosecuting challenges and would be contrary to Congress's intent that the challenge process be ''consumer friendly.'' In particular, we find that it is appropriate to require consumers, in the first instance, to articulate basic elements of any claim that a location is unserved, but that, after such a showing, it is appropriate that providers have the burden to demonstrate, if appropriate, facts that sufficiently rebut the challenger's claim. NRECA supports such an approach, arguing that the Commission should establish a preponderance of the evidence standard and shift the burden of proof to the provider after challenger raises ''a legitimate challenge or question regarding the reported service availability.'' According to NRECA, ''[t]his would provide the relevant information in the most efficient manner for resolution.'' We agree and find that it would be inappropriate to establish a heavier evidentiary burden in consumer challenges than a preponderance-of-the-evidence standard or to place the burden of proof on the challenger at all phases.

88. While consumers will generally have greater familiarity with the circumstances that prompt them to challenge coverage, providers are in the best position to evaluate and document the specifics of their networks at a consumer location. It is thus necessary to shift the burden to the provider to rebut preliminarily valid challenges. These processes will encourage the sharing of information, opportunities for cooperation, and prompt resolution of challenges. We continue to believe that this dispute resolution process achieves the Broadband DATA Act's objectives, while minimizing burdens on the parties and conserving valuable Commission resources to the maximum extent possible.

89. *Consumer Challenge of Fabric Data.* We adopt the proposal in the *Second Order and Third Further Notice* to establish a distinct process for submitting challenges to location information in the Fabric, which would not generally require the involvement of a broadband provider. Specifically, there will be three specific bases for a challenge to the Fabric: Placement of location on the map is wrong (geocoder/broadband serviceable location); location is not broadband serviceable (*e.g.,* condemned, not a habitable structure); or serviceable location is not reflected in the Fabric. We will also permit challengers to Fabric data to provide text and documentation in the portal to challenge other aspects of the Fabric data. Challenges to the Fabric data will be filed on the same portal as challenges of availability and coverage map data, along with the submission of much of the same information, including details and evidence about the disputed location and a selection of pre-established categories of disputes. As proposed, the challenge process platform will provide challengers with an acknowledgement of their submissions and information about the process, including expected timing. Also as proposed, the portal will notify affected providers of the challenge and allow, but not require, them to submit information relating to the Fabric challenge. We also adopt the proposed goal of resolving challenges to the Fabric within 60 days of receipt of the challenge and will provide notification of the resolution to the challenger and affected providers.

2. Challenges by Governmental and Other Entities to Fixed Broadband Internet Access Service and Fabric Data

90. *Challenges to Coverage Data.* As with consumer challenges to fixed data, we largely adopt the proposed processes for challenges from governmental and other entities to coverage and Fabric data. Specifically, we will allow government and other entities to file challenges to coverage reported at locations where they are not actual or potential consumers of the reported broadband service. As proposed in the *Second Order and Third Further Notice,* we will require the following information from these challengers, some of which is the same information

as is required for consumer challenges: (1) The name and contact information for the challenging entity; (2) the geographic coordinates (latitude/longitude) or the street addresses of the locations at which coverage is disputed; (3) the names of the providers whose data are being disputed; (4) one or more categories of dispute, selected from pre-established options—*e.g.,* no actual service offering at location, provider failed to install within ten business days of valid order for service, provider denied request for service, installations attempted but unsuccessful, reported speed not available for purchase; (5) evidence/details supporting dispute, including: (a) The challenger's methodology, (b) factual and other basis for assertions underlying the challenge, and (c) communications with provider, if any, and outcome; and (6) a certification that the information submitted with the challenge is accurate, equivalent to the certification made by providers in submitting their availability data. For government and third-party challenges to Fabric data, we also require challengers to submit details and evidence about the disputed location.

91. We also adopt processes and timeframes for provider replies and dispute resolution for challenges by governmental and other entities, following a similar approach to the one we adopt for consumer challenges to availability and coverage. Specifically, once a challenge containing all the required elements is submitted in the online portal, the locations covered by the challenge will be identified in the public coverage maps as ''in dispute by governmental or other entity/pending resolution.'' We decline to give providers 180 days to respond to bulk challenges, as urged by ACA Connects, because this would be contrary to the Broadband DATA Act's mandate that we adopt a process for ''speedy resolution of challenges'' and ACA Connects provides no basis for establishing such an extended timeframe for this process. The online portal shall alert a provider if there has been a challenge submitted against it, and providers will have 60 days within which to reply to a challenge by a governmental or other entity in the online portal. In the event that the provider disputes the challenge, the challenger and the provider will then have 60 days to attempt to resolve the challenge. If the parties are able to resolve some or all of the challenge in that time, then they must notify the Commission and the provider must remove any locations that are not served within 30 days and the Commission will remove the ''in dispute/pending resolution'' for any others so designated.

92. If the parties are unable to reach consensus within 60 days, then the provider must report the outcome of efforts to resolve the challenge in the online portal, after which the Commission will review the evidence and make a determination—with the burden on the provider to demonstrate service availability—either: (1) In favor of the challenger, in which case the provider must remove the location from its Digital Opportunity Data Collection polygon within 30 days of the decision; or (2) in favor of the provider, in which case the location will no longer be subject to the ''in dispute/pending resolution'' designation on the coverage maps. As with consumer challenges to coverage data, a provider's failure to timely respond to a challenge will result in a finding for the challenger.

93. A number of parties have raised concerns about the possibility that third-party challenges to coverage data, especially bulk challenges, could be made in bad faith or for inappropriate reasons, such as causing competitive harm to filers. USTelecom and ACA Connects urge the Commission to ''use a rigorous process for reviewing non-consumer challenges and apply a clear evidentiary standard particularly for bulk challenges so that the Commission and service providers are not inundated with illegitimate challenges.'' USTelecom and WISPA assert that bulk challenges should only be accepted from governmental and Tribal entities or third parties filing on behalf of a consumer or group of consumers that have evidence of failing to obtain service. USTelecom and WISPA argue that other entities will not have a legitimate interest in submitting bulk challenges.

94. We agree that there is some risk that third-party challenges, including bulk challenges, could be filed for improper purposes but also note that the Broadband DATA Act contemplated that challenges would be open to a variety of entities. Accordingly, we will not categorically exclude any challengers from making these challenges. We believe that requiring governmental and other challengers to explain their methodologies and the bases for their challenges and to certify to the accuracy of the information in their challenges will help to limit spurious filings. We note that, in contrast to consumer challengers, third-party challengers may not always have direct, firsthand knowledge of the on-the-ground facts associated with a challenge. In such cases, third-party challengers will certify to the accuracy of factual assertions concerning how they sourced and processed the information submitted with their challenges. Additionally, as we did in connection with consumer filings, we require that governmental and other filers submit all required elements of a challenge before requiring a provider to respond. We agree with USTelecom that evidence submitted in support of government and third-party challenges must meet a higher standard than preponderance of the evidence. Accordingly, governmental and other third-party challengers must present evidence showing a lack of coverage by clear and convincing evidence. We find that a higher evidentiary standard for governmental and other challenges is appropriate given the relatively more equal level of knowledge and expertise on both sides of this type of challenge, the potentially significant burden that these challenges can impose on providers, and the possibility of bad faith challenges.

95. *Challenges to Fabric Data.* In the *Second Order and Third Further Notice,* the Commission proposed to align the process for challenges by governmental and other entities to the Fabric with the process for consumer challenges to the Fabric data. We conclude that these proposals are appropriate for challenges by governmental and other entities to the Fabric data and adopt this proposal. Accordingly, challenges to the Fabric data by governmental and other entities will be initiated in the same portal as other challenges to coverage and Fabric data with the same filing requirements as apply to consumer challenges to the Fabric. As with other challenges, the portal will provide the challenger with an acknowledgement of the challenge and will notify any affected providers of the challenge and allow, but not require, them to submit information relating to the Fabric challenge. We adopt the proposed goal of resolving challenges to the Fabric within 60 days of receipt of the challenge and, as with consumer challenges, will provide a notification of the outcome of each challenge to the challenger and affected providers.

96. The Commission received limited comments concerning challenges to the Fabric data. The National States Geographic Information Council (NSGIC) indicates that most states have extensive GIS data that could be useful in challenging the broadband map and the Fabric. The NSGIC urges the Commission to provide an easy, flexible means for states to provide statewide datasets on a wholesale basis. We agree that such information could potentially be extremely useful in improving the

accuracy of map and note that states and other entities wishing to submit such data will have the option of submitting them to us as verified third-party data or through a formal challenge to the Fabric.

G. Mobile Service Challenge Process

97. The Broadband DATA Act requires the Commission to adopt rules to establish a user-friendly challenge process through which consumers, State, local, and Tribal governmental entities, and other entities or individuals may submit coverage data to challenge the accuracy of the coverage maps, broadband availability information submitted by providers, or information included in the Fabric. In the *Second Order and Third Further Notice,* the Commission proposed a user-friendly challenge process for consumers, State, local and Tribal governments, and other entities seeking to challenge mobile broadband coverage map data. In this *Third Report and Order,* we adopt the Commission's proposals from the *Second Order and Third Further Notice,* with the modifications described below. As stated in the *Second Order and Third Further Notice,* the Commission's objective in adopting rules is to create a process that ''encourages participation to maximize the accuracy of the maps, while also accounting for the variable nature of wireless service.''

1. Consumer Challenges of Mobile Coverage Data

98. First, we adopt the proposal to allow consumers to challenge mobile coverage data based on lack of service or poor service quality such as slow delivered user speeds. The Broadband DATA Act requires the Commission to consider the costs to consumers and providers resulting from a misallocation of funds because of a reliance on outdated or otherwise inaccurate information in the coverage maps, and we agree with commenters that permitting mobile broadband coverage challenges will help us verify the accuracy of mobile coverage maps by providing us with a source of on-the-ground data that reflects consumer experience in areas across the country. Specifically, the Broadband DATA Act establishes minimum speeds of 5/1 Mbps for 4G LTE services as a requirement of demonstrating coverage. In the *Second Order and Third Further Notice* we expanded the Broadband DATA Act's general approach to establishing mobile coverage to 3G and 5G–NR coverage as well. Thus, we do not believe that we could reasonably collect challenges to mobile coverage without relying on speed testing.

99. Consistent with the requirements of the Broadband DATA Act, we adopt our proposals to collect identifying information and speed test data from consumer challengers. In the *Second Order and Third Further Notice,* we proposed to collect identifying information from mobile consumer challengers. The *Third Further Notice* also asked whether such identifying information would cover all potential challenges authorized by the Broadband DATA Act and facilitate participation in the challenge process, while also being detailed enough to discourage frivolous filings. We also proposed to require consumers challenging mobile broadband coverage to submit speed test evidence. The Commission sought comment on whether to require a minimum number of speed tests, specify the distance between speed tests, or require that speed tests be conducted during a specified time period as part of the data collection. The Commission also sought comment on whether it should require the use of a specific speed test application.

100. Commenters supported requiring consumers to supply identifying information and speed test data to enable mobile service providers to defend challenges of mobile broadband data coverage. Commenters also submitted specific recommendations about the information that challengers should be required to include in a challenge and the rules that should apply to speed test data. Commenters urged the Commission to take steps to deter frivolous filings. Commenters also urged us to establish procedures specifying how and when mobile service providers are required to respond to consumer challenges. We agree with commenters that we should require consumer challengers to provide identifying information sufficient to deter frivolous filings, ensure the reliability and consistency of challenges, and specify how and when mobile providers are required to respond to consumer challenges.

101. Submission of certain identifying information is appropriate to deter frivolous filings, and we therefore require consumers challenging mobile broadband coverage data to submit the following information: (1) The name and contact information of the challenger (*e.g.,* address, phone number, and/or email address); (2) the name of the provider being challenged; and (3) a certification that the challenger is a subscriber or authorized user of the provider being challenged. When collecting, storing, using, or disseminating personally identifiable information in connection with the challenge process described here, the Commission will comply with the requirements of the Privacy Act of 1974, 5 U.S.C. 552(a).

102. We also require consumers to submit speed test data to support their mobile coverage challenges. Consumer challengers must take all speed tests outdoors. Commenters express support for requiring consumers to take speed tests outdoors. Mobile providers are required to submit propagation maps reflecting outdoor coverage, and therefore requiring consumers to perform speed tests outdoors will ensure that speed tests measure the coverage that providers are required to model. Consumer challengers must also indicate whether each test was taken in an in-vehicle mobile or outdoor pedestrian environment. Tests taken on bicycles and motorcycles will be considered tests from in-vehicle mobile environments. Tests taken from stationary positions and tests taken at pedestrian walking speeds will be considered tests taken in outdoor pedestrian environments. Verizon urges the Commission to require, for any drive tests conducted by challengers, that the challenger stop the vehicle to run the test and place the test device outside the vehicle or connect it to an external antenna. We decline to adopt such a requirement because we find that it would add complexity to the speed test rules we adopt for consumer challengers that would be inconsistent with the Commission's obligation under the Broadband DATA Act to adopt a user-friendly approach that encourages participation in the challenge process. As outlined above, as they are submitting their challenges, consumers will be required to indicate whether each test was taken in an in-vehicle mobile or outdoor pedestrian environment.

103. Although the Commission proposed requiring consumer challengers to submit speed test data only in connection with quality of service challenges, we find that consumers challenging mobile broadband availability and/or quality of service should submit the same information in support of both types of challenges. The data typically collected by speed test apps can be used for both types of challenges and the data will be useful for the Commission and challenged parties when evaluating challenger data. To ensure that consumer challenge data meet necessary reporting requirements, we require consumers to use a speed test application that has been designated by

OET, in consultation with OEA and WTB, for use in the challenge process. To ensure that the challenge submission format includes an online mechanism as required by Section 802(b)(5)(B)(iv)(I)–(IV) of the Broadband DATA Act and is user-friendly, and in order to reduce the burdens on consumers seeking to submit challenges, applications approved by OET for collecting consumer challenges must automatically collect the following information associated with each speed test: (1) The geographic coordinates of the test(s) (latitude/longitude); (2) consumer device type, brand/model, and operating system used; (3) download and upload speeds; (4) latency; (5) the date and time of the test; (6) signal strength, if available; (7) an indication of whether the test failed to establish a connection with a mobile network at the time and place it was initiated; (8) network technology (*e.g.,* LTE, 5G) and spectrum bands used for the test; and (9) the location of the server to which the test connected. Commenters generally support including these metrics. In addition, designated applications must allow consumer challengers to submit all of the information required to support a challenge directly to the Commission from their mobile device.

104. Approved speed test applications also must require users submitting challenges to certify that the user is the subscriber or authorized user of the provider being challenged; that the speed test measurements were taken outdoors; and that to the best of the person's actual knowledge, information, and belief, the handset and the speed test application are in ordinary working order and all statements of fact contained in the submission are true and correct. Consumers must also be able to indicate, through the speed test application, whether each test was taken in an in-vehicle mobile or outdoor pedestrian environment. Approved speed test applications also must include an appropriate privacy notice about how consumer data will be stored, used, and protected. We find that requiring the use of approved speed test applications that automatically capture relevant speed test details and allow consumers to submit speed test results directly will both facilitate consumers' participation in the challenge process and enable the Commission to verify that the necessary data are submitted with each challenge in accordance with the requirements of the Broadband DATA Act. We direct OET, in consultation with OEA and WTB, to update the FCC Speed Test App as necessary or develop a new speed test application to collect the metrics and include the functionalities set forth above, so that challengers may use it in the challenge process. We also direct OET to approve additional third-party speed test applications that collect all necessary data and include the functionalities described above.

105. We recognize that, unlike the government and third party challenges, consumers likely will submit challenges regarding distinct, localized areas (*e.g.,* at or near their homes and businesses) and will not have the time and resources to engage in testing a broader area or for extended periods. In order to encourage consumers to participate in the challenge process, while at the same time assuring that providers are not subject to the undue cost of responding to a large number of challenges to very small areas, we direct OEA, in consultation with WTB, to determine the threshold number of mobile consumer challenges within a specified area that will constitute a challenge triggering a provider's obligation to respond. In the *Second Order and Third Further Notice,* the Commission sought comment on establishing rules for consumer challengers, including rules requiring a minimum number of speed test observations. Mobile service providers argue that a requirement to respond to every consumer challenge would be a substantial burden. While we cannot predict precisely how many challenges consumers will submit, we expect the number will be significant and agree that the challenge process should resolve challenges in an efficient manner, mitigate the time and expense involved, and ensure that the mobile coverage maps are as reliable and useful as possible. To meet these objectives, the Commission will aggregate speed test results received from multiple consumer challengers in the same general area. When these aggregated results reach an appropriate threshold, they will constitute a cognizable challenge requiring a provider response. We direct OEA, in consultation with WTB, to establish the methodology for determining this threshold. In developing this methodology, OEA should consider, *inter alia,* the number, location, and timing of the tests, variability in test results, and whether the tests were conducted in urban or rural areas.

106. We also direct OEA, in consultation with WTB, to establish the methodology for determining the boundaries of a geographic area where the threshold for a cognizable challenge has been met. For example, AT&T has submitted a preliminary proposal for defining a challenge area based on the test data submitted by the challenger(s), and we direct OEA, in consultation with WTB, to consider this proposal as well as other proposals as they develop the methodology that will be used. Speed test results submitted by consumer challengers that do not reach the threshold of a cognizable challenge will nevertheless be incorporated in the Commission's analysis of crowdsourced data. We direct OEA, in consultation with WTB, to establish the procedures for notifying service providers of cognizable challenges filed against them. Finally, we agree with AT&T that experience over time may warrant adjustments to the methodology used to define the scope of a challenge. To the extent that experience warrants that the specifications, data format, or methodology for making such a determination be refined or adjusted, we further direct the staff, after notice and comment, to adjust the methodology for determining the threshold for a challenge and for establishing the boundaries of a challenge area.

107. *Challenge Responses.* For challenged areas, we require providers either to submit a rebuttal to the challenge or to concede the challenge within a 60-day period of being notified of the challenge. We agree with commenters that permitting 60 days to respond to a challenge, rather than the proposed 30 days, makes the challenge process more manageable for providers, while also providing for speedy resolution of challenges consistent with the requirements of the Broadband DATA Act.

108. To rebut a challenge, we require each provider to submit to the Commission either on-the-ground test data or infrastructure data, so that Commission staff can examine the provider's coverage in the challenged area and resolve the challenge. We recognize that on-the-ground testing or infrastructure data alone may not be sufficient for the Commission to evaluate a challenge fully in all cases. To the extent that a service provider believes that it would be helpful to the Commission in resolving a challenge, the provider may submit other data in addition to the required data, including but not limited to, either infrastructure or on-the-ground testing data (to the extent such data are not the primary rebuttal option submitted by the provider) or other types of data, such as data collected from network transmitter monitoring systems or software, or spectrum band-specific coverage maps. To permit speedy resolution of challenges, such other data must be submitted at the same time as the

primary on-the-ground testing or infrastructure rebuttal data submitted by the provider. If needed to ensure adequate review, OEA may also require that the provider submit other data in addition to the data initially submitted, including but not limited to, either infrastructure or on-the-ground testing data (to the extent not the option initially chosen by the provider) or data collected from network transmitter monitoring systems or software (to the extent available in the provider's network) within 60 days upon OEA's request.

109. We agree with commenters that adopting a flexible approach for responding to challenges will help mitigate the time and expense involved and encourage prompt resolution in accordance with the requirements of the Broadband DATA Act. This approach is consistent with our decision to give service providers a choice in how to respond to coverage map verification requests from staff, and both types of data generally should enable us to review the merits of the challenge while at the same time affording the service providers the opportunity to decide the most cost-effective means of rebutting the challenge on a case-by-case basis. A mobile service provider that submits on-the-ground test data to rebut a challenge will be subject to the same on-the-ground test data requirements and specifications as apply to provider submissions of the data in the verification context described above. Similarly, a mobile service provider that submits infrastructure data to rebut a challenge will be subject to the same infrastructure data requirements and specifications that apply to case-by-case provider submissions of these data in the verification context described above. In the *Second Order and Third Further Notice,* the Commission proposed that mobile providers seeking to rebut a challenge must submit a reply in the online portal within 30 days of being notified of a challenge. For challenges involving delivered speeds, the Commission also proposed that a provider disputing the challenge must submit evidence that it has evaluated the speed of its service at the location of the dispute and has determined that the delivered speeds of the service match the speeds indicated on the provider's coverage map. Providers argue that the Commission should permit additional time to respond to challenges. They also urge the Commission to allow providers flexibility in responding to challenges. CTIA argues that the Commission's rules should not require providers to respond in a particular way and that the most appropriate response will vary depending on the nature of the challenge. Verizon similarly urges the Commission to allow providers multiple options for responding to challenges, including providing on-the-ground speed test measurements, data collected from transmitter monitoring software, or other speed test data. . . .'' In cases where providers must revise maps in response to a challenge, CTIA requests that providers be allowed to update maps as part of their next Digital Opportunity Data Collection filing.

110. Several mobile providers urge the Commission to provide additional flexibility in the types of data that can be submitted in response to consumer challenges, and they specifically argue that they should be permitted to submit drive testing data collected in the ordinary course of business, third-party testing data, such as Ookla data, and/or tower transmitter data collected from monitoring software. The provider may voluntarily submit these or other types of additional data to support its rebuttal, but we do not believe the record supports a finding that such data are sufficient to permit such alternative data to be a complete substitute for either on-the-ground testing or infrastructure data. We therefore direct OEA to review such data when voluntarily submitted by providers in response to consumer challenges. If, after reviewing such data, OEA concludes that any of the data sources are sufficiently reliable, we direct them to specify the appropriate standards and specifications for each type of data and add it to the alternatives available to providers to rebut a consumer challenge. In so directing OEA to make such a determination, we specifically recognize that such an analysis may lead them to expand the options available to providers for responses with respect to consumer challenges, but not do so for other purposes, including responses to governmental and other entity challenges and/or verification investigations.

111. When a provider responds to a consumer challenge, the consumers who submitted the data will be notified and be able to see the provider's response. We direct OEA to develop a methodology and mechanism to determine if the data submitted by a provider constitute a successful rebuttal to all or some of the challenged service area and to establish procedures to notify challengers and providers of the results of the challenge. Consistent with our decision in the fixed context, we direct OEA to use the ''preponderance of the evidence'' standard in creating the mechanism to resolve challenges with the burden on the provider to verify their coverage maps in the challenged area. If a provider that has failed to rebut a challenge subsequently takes remedial action to improve coverage at the location of the challenge, the provider must notify the Commission of the actions it has taken to improve its coverage and provide either on-the-ground test data or infrastructure data to verify its improved coverage.

112. Consistent with the fixed challenge process, in cases where a mobile service provider concedes or loses a challenge, the provider must file, within 30 days, geospatial data depicting the challenged area that has been shown to lack service. Such data will constitute a correction layer to the provider's original propagation model-based coverage map, and Commission staff will use this layer to update the broadband coverage map. In addition, to the extent that a provider does not later improve coverage for the relevant technology in an area where it has conceded or lost a challenge, it must include this correction layer in its subsequent Digital Opportunity Data Collection filings to indicate the areas shown to lack service.

2. Challenges by Governmental and Other Entities to Mobile Data

113. *Minimum Requirements for Challengers.* For the reasons described above regarding consumer challenges of mobile provider data, where we allow consumers to submit mobile broadband coverage challenges based on lack of mobile broadband service or poor service quality, such as slow delivered speeds, we also permit governmental and other entities to challenge mobile broadband coverage based on those grounds.

114. In the *Second Order and Third Further Notice,* the Commission proposed that governmental and other entities follow a grid-based approach for submitting standardized challenge data. Specifically, the Commission proposed to overlay a uniform grid of one square kilometer (1 km by 1 km) grid cells on each carrier's propagation model-based coverage maps and then require governmental and other entities interested in challenging the accuracy of a carrier's map to submit user speed test measurement data showing measured user throughput speeds in the area they wish to challenge. Measurement data indicating speed levels below applicable parameters in the challenged area would constitute evidence that a provider's coverage map may not be accurate. The Commission asked for comment on the

number of speed test measurements it should require in each grid cell and discussed alternative approaches, including requiring challengers to submit at least three speed test measurements per square kilometer grid cell in the disputed area or speed test measurements in a certain percentage of grid cells in a challenged area.

115. Commenters disagree concerning the Commission's proposal. AT&T, for example, argues that the proposed approach is overly complex and that the Commission should instead permit challengers to conduct speed tests in the area they wish to challenge and submit the results with latitude and longitude information. Verizon urges the Commission to adopt strict evidentiary standards and argues that requiring three speed test measurements per square kilometer grid cell is insufficient to assess coverage. The California PUC opposes the proposed grid-based approach, urging the Commission instead to provide more flexibility to government entities submitting challenges.

116. For mobile broadband coverage challenges, we require government and third-party entities to submit speed test data, but we decline to adopt the grid-based approach described in the *Second Order and Third Further Notice.* The Broadband DATA Act requires the Commission to consider lessons learned from the challenge process established in the Mobility Fund Phase II proceeding, and we agree with commenters that the grid-based approach that the Commission adopted in that proceeding added unnecessary complexity for challengers. Adopting a grid-based approach for this proceeding could also discourage participation by government and third-party entities. We recognize that such challengers may use different tools to obtain speed test measurement data, including their own data gathering and mapping programs. We want to create a flexible approach that permits these parties to participate in the challenge process, so that the Commission may use their data to improve the mobile broadband coverage maps.

117. To give flexibility to challengers, we will not require government and other entity challengers to use a Commission-approved speed test application, but rather will allow them to use their own software to collect data for the challenge process. When they submit their data, however, the data must contain the following metrics for each test: (1) The geographic coordinates of the tests (*i.e.,* latitude/longitude); (2) the name of the service provider being tested; (3) the consumer-grade device type, brand/model, and operating system used for the test; (4) the download and upload speeds; (5) the latency; (6) the date and time of the test; (7) whether the test was taken in an in-vehicle mobile or outdoor pedestrian environment, and if in-vehicle, whether the test was conducted with the antenna outside of the vehicle; (8) for an in-vehicle test, the speed the vehicle was traveling when the test was taken, if available; (9) the signal strength, if available; (10) an indication of whether the test failed to establish a connection with a mobile network at the time and place it was initiated; (11) the network technology (*e.g.,* LTE, 5G) and spectrum bands used for the test; and (12) the location of the server to which the test connected. Given the more complex nature of government and other entity data gathering programs, we require government and other entity challengers to submit more detail regarding speed tests that were taken in an in-vehicle mobile environment than we require for consumer challengers. Commenters express support for providing flexibility for governmental and third-party challenges. We note that these metrics are substantially the same as the metrics we require approved speed test applications to collect for consumer challenges. Commenters generally support including these metrics. Government and third-party challengers must also submit a complete description of the methodologies used to collect their data. We also adopt the Commission's proposal to require government and other entities to substantiate their data through the certification of a qualified engineer or official. Although the California PUC opposes such a requirement based on concerns about cost, it does not quantify potential costs and we find that requiring a certification from a qualified engineer or official is necessary to help ensure the reliability of the different methodologies that governmental and other entity challengers may use to collect their data. Moreover, for those governmental and other entities wishing to avoid costs associated with certifying the results, they remain free to submit challenge data to the Commission through approved applications under the consumer challenge process.

118. We require government and other entity challengers to conduct on-the-ground tests using a device advertised by the challenged provider as compatible with its network and to conduct all tests outdoors. To avoid adding additional complexity, we decline requests to adopt additional evidentiary standards, such as a maximum speed for in-vehicle tests, but direct OEA, WTB, and OET to adopt additional testing requirements if it determines it is necessary to do so.

119. We also will permit competing mobile service providers to submit challenges. In the *Second Order and Third Further Notice,* the Commission acknowledged that a mobile service provider might have different motives for challenging a competitor's propagation models and coverage maps than governmental entities and other third parties that do not provide competing mobile broadband internet access service, and the Commission sought comment on whether to permit challenges from competing mobile providers. At least one commenter expresses concern about permitting challenges from competing mobile providers. While we recognize the concerns that have been expressed, we nevertheless conclude that, on balance, the maps will be a more reliable data source with those challenges than without. As we conclude that we will permit challenges from other service providers, we do not pass on the question of whether we may lawfully exclude any class of potential challenger. We also decline to establish different evidentiary standards for competing mobile service providers and instead require them to follow the same rules as other non-consumer challengers. We expect that the requirements and procedures we adopt for challenging mobile broadband coverage data will allow us to verify and ensure the reliability of challenge process data submitted by all challengers in accordance with the Commission's obligations under the Broadband DATA Act. And, given the potential costs of widespread on-the-ground testing, we expect that like other entities, service providers will not waste resources lodging challenges they know are unlikely to succeed.

120. Consistent with the approach we adopt for consumer challenges in the mobile context, we will aggregate speed test evidence received from multiple governmental and third-party challengers in the same general area. When these aggregated results reach an appropriate threshold to be determined by the OEA, they will constitute a cognizable challenge that requires a provider response. We direct OEA, in consultation with WTB, to establish the methodology for determining this threshold and establishing the boundaries of an area where the threshold has been met. On-the-ground test data submitted by governmental and third parties that do not reach the threshold of a cognizable challenge will

be considered in the Commission's analysis of crowdsourced data. Finally, we agree with AT&T that OEA's experience over time in verifying coverage data and evaluating challenges may warrant adjustments to the methodology used to define the scope of a challenge. To the extent that such experience warrants adjustment or refinement to the specifications, data format, or methodology for making such a determination, we further direct the staff, after notice and comment, to adjust the methodology for determining the threshold for a challenge and for establishing the boundaries of a challenge area.

121. *Challenge Responses.* We adopt the same challenge response process for government and third-party entities as we do for consumer challenges in the mobile context. We require providers either to submit a rebuttal to the challenge within a 60-day period of receiving notice of the challenge, which rebuttal shall consist of either data from on-the-ground tests or infrastructure data, or else concede the challenge and thereby have the challenged area identified on the mobile coverage map as an area that lacks sufficient service. We have directed OEA and WTB to develop the specific requirements and methodologies that providers must use in conducting on-the-ground testing and in providing infrastructure data. In response to commenters that urge the Commission to provide additional flexibility in the types of data that can be submitted in response to government and third-party challenges, we note that, to the extent that a service provider believes it would be helpful to the Commission in resolving a challenge, the provider may submit other data in addition to the data initially required. These other data may include, but are not limited to, either infrastructure or on-the-ground testing data (to the extent such data are not the primary option chosen by the provider) or other types of data, such as data collected from network transmitter monitoring systems or software, or spectrum band-specific coverage maps. The data submitted by providers will be reviewed by OEA. To the extent that such review supports a conclusion that any such data are sufficiently reliable, OEA shall specify appropriate standards and specifications for that type of data and add it to the alternatives available to providers to rebut governmental and other third-party challenges. To permit speedy resolution of a challenge, such other data must be submitted at the same time as the primary on-the-ground testing or infrastructure rebuttal data submitted by the provider.

122. We recognize that on-the-ground testing or infrastructure data alone may not be sufficient for the Commission to investigate a challenge fully in all cases. Accordingly, if needed to ensure an adequate review, OEA may also require that the provider submit other data in addition to the data initially submitted, including but not limited to, either infrastructure or on-the-ground testing data (to the extent not the option initially chosen by the provider) or data collected from network transmitter monitoring systems or software (to the extent available in the provider's network) within 60 days upon OEA's request.

123. We decline to adopt the suggestion of certain commenters that the Commission permit government and other entities to file challenges only during a limited time period each year because we find that it would likely inhibit participation in the challenge process and limit the Commission's ability to obtain timely data that will help us improve the accuracy of mobile coverage maps. However, we will only accept new challenges to the most recently published coverage maps. If a provider that has failed to rebut a challenge subsequently takes remedial action to improve coverage at the location of the challenge, the provider must notify the Commission of the actions it has taken to improve its coverage and provide either on-the-ground test data or infrastructure data to verify its improved coverage.

124. Consistent with the fixed challenge process and with the process we adopt for consumer challenges in the mobile context, in cases where a mobile provider concedes or loses a challenge, the provider must file, within 30 days, geospatial data depicting the challenged area that has been shown to lack sufficient service. To the extent a provider must make multiple updates to its coverage maps as a result of the challenge process, it can batch them together, but all updates must meet the 30-day deadline. Such data will constitute a correction layer to the provider's original propagation model-based coverage map, and Commission staff will use this layer to update the broadband coverage map. In addition, to the extent that a provider does not later improve coverage for the relevant technology in an area where it conceded or lost a challenge, it must include this correction layer in its subsequent Digital Opportunity Data Collection filings to indicate the areas shown to lack service.

3. Public Availability of Information Filed in the Challenge Processes

125. Consistent with our proposal in the *Second Order and Third Further Notice,* the Commission will make public the information about the location that is the subject of the challenge (including the street address and/or coordinates (latitude and longitude)), the name of the provider, and any relevant details concerning the basis for the challenge. Commenters support this proposal, and we agree that public input will be most effective if these data are made available, so that all stakeholders have access to the facts and methods through which coverage is evaluated in the challenge process. We will keep all other challenge information, such as individual contact information, private based on the personal privacy interests involved and our conclusion that its disclosure would not be ''helpful to improve the quality of broadband data reporting.''

H. Implementation of Broadband Locations Fabric Database

126. In the *Second Order and Third Further Notice,* the Commission noted that, while the Broadband DATA Act authorizes the Commission to contract for the creation and maintenance of the Fabric, the Commission had not been appropriated funding to cover the cost of implementing the Fabric. Congress has recently authorized funding for the implementation of the Digital Opportunity Data Collection and the Fabric, which will enable us to move forward with procurements and other steps necessary to create and operate these platforms. Today we adopt certain definitions and standards for use in the context of the Fabric. As an important first step, we adopt as the fundamental definition of a ''location'' for purposes of the Fabric: A business or residential location in the United States at which fixed broadband internet access service is, or can be, installed. This definition closely tracks the one used in connection with the Commission's high-cost programs, as proposed in the *Second Order and Third Further Notice,* with slight refinements to align with the language of the Broadband DATA Act. We also adopt the proposal to have the Fabric reflect each location as a single point defined by a set of geographic coordinates that fall within the footprint of a building. We note that USTelecom and WISPA urge us to reflect locations as a single point, defined by both geographic coordinates and street addresses. We agree with USTelecom and WISPA that street addresses are textual and can be inconsistent as a

label. Accordingly, while street addresses are likely to be useful in the Fabric, we decline to commit to a specific role for such data until we are able to determine the types of data and functionality that will be available through the procurement process.

127. Additionally, we adopt definitions of ''residential location'' and ''business location'' that are based on the definitions of those terms that are used in connection with the CAF, with some modifications. We note that there was significant support in the record for defining locations in the Fabric consistent with the guidance in the CAF, and we do so here with certain refinements. Specifically, we will treat the following as a ''residential location'' in the Fabric: All residential structures, including all structures that are, or contain, ''housing units'' or ''group quarters'' based on the U.S. Census Bureau definition of these terms. We determine to include group quarters in this definition, which is a departure from the definition used in connection with the CAF, because we believe this will be more consistent with the intention of the Broadband DATA Act that the Fabric include ''all locations in the United States where fixed broadband internet access service can be installed.''

128. We will treat the following as business locations in the Fabric: All non-residential (business, government, non-profit, etc.) structures that are on a property without residential locations and that would be expected to demand broadband internet access service. As with residential locations, we define a building with multiple offices as a single location in the Fabric, and we anticipate that each individual building will be a location. However, as with residential locations, we recognize that there may be instances where it is not appropriate to count every building as a distinct location (*e.g.,* buildings without power or multiple buildings on the same property owned and occupied by the same entity). We direct OEA, in consultation with WCB, to ensure that locations reflect broadband serviceability to the extent they are able to make determinations given the data available.

129. We anticipate that the Fabric will include all individual structures to which broadband internet access service can be installed, consistent with the proposal in the *Second Order and Third Further Notice.* There may be some circumstances, however, where counting each individual building or structure might not reflect the way broadband service is provisioned (*e.g.,* broadband may not be deployed individually to each occupied boat in a marina or to a central location in the marina; or to homes without electric power). For example, from the definition of ''housing units'' at *https://www.census.gov/housing/hvs/definitions.pdf:* ''Tents and boats are excluded if vacant, used for business, or used for extra sleeping space or vacations'' so occupied boats are housing units . . . which is much easier for a snapshot in time as the census officially is.'' As USTelecom and WISPA note, ''[t]he Fabric, as it is described in the Broadband DATA Act, is intended to report serviceable locations so that when providers report on top of the Fabric, those locations with available service and those lacking service will be revealed with granularity.'' We direct OEA, in consultation with WCB, to ensure that locations reflect broadband serviceability to the extent they are able to make determinations given the data available. For example, USTelecom and WISPA seek guidance on whether mobile homes will be treated as housing units for purposes of the Fabric, contending that land use and tax records can resolve ambiguities on whether such structures are stationary or recreational vehicles temporarily at a location.

130. As proposed, we determine to identify a Multi-Tenant Environment as a single record in the Fabric and, to the extent feasible, to associate the number of units within each Multi-Tenant Environment with the Multi-Tenant Environment's location information in the Fabric. USTelecom and WISPA support this approach because of the difficulty in precisely identifying all of the individual units in Multi-Tenant Environments, especially large ones, and because, as Connected Nation notes, ''capturing information on the location of each unit within every Multi-Tenant Environment across the United States would likely be cost-prohibitive, and also unnecessary, given that broadband service delivered to a given Multi-Tenant Environment structure would be made available to all units within that structure.'' It is because of this difficulty and additional burden on providers that we disagree with commenters such as NRECA and the City of New York that argue for assigning unique location identifiers to each unit in a Multi-Tenant Environment. In the end, we direct OEA, in consultation with WCB, to analyze these determinations during the procurement process. If appropriate, we direct OEA and WCB, after seeking further notice and comment in this docket, to determine whether to add to the types of datapoints or metrics to be associated with individual locations in the Fabric.

131. For non-residential (*i.e.,* business) locations that share a property with residential locations, we anticipate that there may in some instances be differences in broadband serviceability. For example, a multi-tenant unit with storefronts on the ground floor and apartments above might have multiple building entries for residential and business service and so it might be appropriate to treat that single building as both a residential and a business location. Or, a family farm might include both a farmhouse and separate office building (along with a number of outer structures like barns, sheds, silos, coops, etc.). We direct OEA, in consultation with WCB, to ensure that the treatment of such situations reflects broadband serviceability to the extent they are able to make determinations given the data available.

132. Finally, we note that the the procurement process will define what types of data and functionality are available and practical for inclusion in the Fabric. Accordingly, we find that it would be premature to make further determinations about features or elements of the Fabric at this point and direct OEA, in consultation with WCB, to also determine what additional features or datasets are both available and useful for inclusion in the Fabric.

I. Enforcement

133. The Broadband DATA Act makes it unlawful for an entity or individual to willfully and knowingly, or recklessly, submit information or data that is materially inaccurate or incomplete with respect to the availability of broadband internet access service or the quality of service with respect to broadband internet access service. In the *Second Order and Third Further Notice,* the Commission adopted this requirement and sought comment on its implementation and how best to enforce the Digital Opportunity Data Collection rules. We recognize that there is uncertainty surrounding the timing of implementation of various aspects of the Digital Opportunity Data Collection, but we decline to commit to forgoing enforcement at this time. We expect all parties to work in good faith to comply at all times with the requirements in effect and will evaluate the appropriateness of taking enforcement action accordingly.

134. In the *Second Order and Third Further Notice,* the Commission sought comment on how the Commission should determine whether an entity or individual ''willfully and knowingly'' or

''recklessly'' submitted inaccurate or incomplete information. The Commission noted that other statutes the Commission enforces, such as section 510(a) of the Communications Act, include a similar standard of proof. The Commission therefore asked commenters what types of evidence the Commission would need to show that an entity or individual ''willfully and knowingly'' or ''recklessly'' submitted materially inaccurate or incomplete information.

135. Commenters generally agree that the Commission should adopt its proposed definition of ''willfully and knowingly.'' The City of New York argues that the Commission should penalize intentional and unintentional reporting errors. We do not believe providers should be held strictly liable for all mistakes that may be made in Digital Opportunity Data Collection semiannual filings, nor does the statute require such an interpretation. Minor inaccuracies will undoubtedly be discovered by providers through the crowdsourcing, challenge process, audits, and other verification methods established through this proceeding, and enforcement action should be reserved for information or data that is materially inaccurate or incomplete with respect to the availability of broadband services and is submitted willfully and knowingly, or recklessly. As the Commission stated in the *Second Order and Third Further Notice,* ''recklessly'' also suggests more than mere negligence but something less than intent. A number of commenters generally agree with this definition. USTelecom suggests the Commission define ''recklessly'' as ''without any reasonable effort to determine the accuracy of the data submitted.'' ACA Connects suggests that a provider acts recklessly when ''it persistently fails to file accurate or complete DODC reports and files such reports without a reasonable basis for believing they are accurate and complete.''

136. Because the Broadband DATA Act does not define ''willful and knowingly or recklessly,'' we find it reasonable to look to Commission precedent, and, to the extent that the Commission has defined such terms in an enforcement context, to use those definitions for purposes of enforcement actions under the Broadband DATA Act. The Commission has interpreted ''willful'' as the ''conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate'' the law. We therefore believe the Commission may determine whether conduct is ''willful and knowing or reckless'' without the need to further clarify this point in our rules. Consistent with the *Second Order and Third Further Notice* and the record, the Commission will determine the nature of the violation in complying with Digital Opportunity Data Collection rules on the grounds of ''willfully and knowingly or recklessly'' submitting inaccurate or incomplete information on a case-by-case basis, consistent with Commission precedent.

137. The *Second Order and Third Further Notice* also requested comment on the definition of ''materially inaccurate or incomplete,'' including whether the Commission should adopt a qualitative or quantitative definition, and what level of inaccuracy or incompleteness the information would have to reach before it would be considered ''material.'' Additionally, the Commission noted that section 1.17(a)(2) of its rules already makes it unlawful to ''provide material factual information that is incorrect or omit material information,'' and that the Commission has held that a false statement may constitute an actionable violation of that rule, even absent an intent to deceive, if it is provided without a reasonable basis for believing that the statement is correct and not misleading.

138. Based on the record and given our obligation to ensure that providers submit accurate and complete coverage information, we define ''materially inaccurate or incomplete'' as a submission that contains omissions or incomplete or inaccurate information that the Commission finds has a substantial impact on its collection and use of the data collected in compliance with the Broadband DATA Act. The Commission will find a false statement submitted by a provider as part of its Digital Opportunity Data Collection obligations to be an actionable violation of section 1.17(a)(2), even absent an intent to deceive, if the statement is provided without a reasonable basis for believing that the statement is correct and not misleading. We adopt a qualitative approach that focuses on the nature of the inaccuracy or incompleteness, rather than a quantitative standard that would require a showing of multiple inaccurate or incomplete filings in order to rise to the level of material. The Commission may consider successful challenges to a provider's data as evidence to determine whether a submission is materially inaccurate or incomplete.

139. *Penalties.* The Commission sought comment on the scope of appropriate penalties for submitting materially inaccurate or incomplete information, including any civil penalties under the Commission's rules or other applicable statutes and rules. We will assess penalties against providers that file materially inaccurate or incomplete information in the same manner that the Commission enforces other types of violations under the Communications Act. USTelecom and WISPA asked the Commission to only enforce penalties against providers that make material errors and to find that inadvertent errors (whether material or not) should not be subject to penalties. Several other commenters asked the Commission not to penalize providers for all submissions that have flaws, or contain minor, inadvertent, or *de minimis* errors or omissions. As discussed, consistent with the requirement of the Broadband DATA Act, the Commission will enforce penalties against providers who ''willfully and knowingly, or recklessly, submit information or data that is materially inaccurate or incomplete with respect to the availability of broadband internet access service or the quality of service with respect to broadband internet access service.'' The Enforcement Bureau will have the ability to enforce penalties against providers for all submissions that meet this threshold. Section 503(b)(2)(E) of the Communications Act and section 1.80(b)(8) of our Rules set forth the factors to be considered when determining the amount of forfeiture penalties and empowers the Enforcement Bureau to adjust a forfeiture penalty based on several factors. These factors include, ''the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.''

140. The Commission also sought comment on whether to establish a base forfeiture amount, subject to adjustment pursuant to section 503(b) of the Act, and what that amount should be. Only ACA Connects responded, asserting that ''failure to provide required forms or information to the Commission is subject to a $3,000 base forfeiture under the Commission's rules and this amount could serve as a rational starting point for the Commission's forfeiture calculations for [Digital Opportunity Data Collection] violations.'' While the ACA Connects comments appear to address only failure to file required forms or information, we note that our decision to impose a base forfeiture amount pertains to both materially inaccurate or incomplete Digital Opportunity Data Collection filings as

well as the failure to file required Digital Opportunity Data Collection filings. To reflect the importance of the filings at issue, and to encourage compliance, we impose a base forfeiture of $15,000 per violation on providers that file materially inaccurate or incomplete information. We point out that this base forfeiture amount will apply in cases where providers file materially inaccurate or incomplete information, and in cases where providers fail to make Digital Opportunity Data Collection filings. We find this amount appropriate to deter bad actors from willfully and knowingly, or recklessly submitting materially inaccurate or incorrect coverage data or information, and to create sufficient incentive for providers to submit accurate Digital Opportunity Data Collection submissions. In setting this base forfeiture amount, we consider the types of entities required to make Digital Opportunity Data Collection submissions, the need for accurate and precise broadband availability maps, and the potential harm to the public of having maps that reflect an inaccurate or incomplete picture of broadband availability.

141. We do not require the Enforcement Bureau to look at a provider's filing as a singular whole. Instead, the Enforcement Bureau may consider whether a filing has multiple omissions or inaccurate data and may consider each of those to be a separate violation. We reject the proposal put forth by the State of Colorado that would result in providers losing eligibility to receive universal service funding or forfeiture of previously committed universal service funds, and do not adopt the proposal by Next Century Cities, ACA Connects, and others to set a standard that offers multiple warnings before imposing sanctions on providers. We are not persuaded that a new enforcement mechanism such as the one advocated by the State of Colorado will appropriately deter providers from filing materially inaccurate or incomplete Digital Opportunity Data Collection filings. Commenters were divided on the State of Colorado's proposal to make providers ineligible to receive USF funds, with states and localities supporting such a proposal, while providers generally were not supportive. Commenters also agreed that the Commission's existing forfeiture adjustment rules are sufficient. Regarding the Next Century Cities proposal, while we find that it is important to establish a clear set of rules that consistently apply to all providers, we note that the Enforcement Bureau may exercise discretion to take into account where appropriate the size and geographical location in which a provider makes service available. Warnings or reduced forfeitures can also be determined on a case-by-case basis. Moreover, some providers, such as certain wireless internet service providers, are already entitled to a citation before being subjected to a forfeiture under section 503 of the Act.

142. The Commission also proposed and sought comment on an approach that would distinguish between entities that make conscientious and good faith efforts to provide accurate data and those that fail to take their reporting obligations seriously or affirmatively manipulate the data being reported. We find that adopting this proposal is unnecessary because the statute only addresses situations in which an individual or entity ''willfully, knowingly, or recklessly, submit[s] information or data . . . that is materially inaccurate or incomplete with respect to the availability of broadband internet access service or the quality of service with respect to broadband internet access service.'' The Commission has adopted the statute's standard and the Enforcement Bureau will use it to measure if errors, inaccuracies, or incomplete filings that are discovered merit enforcement action, regardless of whether those errors, inaccuracies, or incomplete filings are made in good faith or otherwise.

143. The Commission also sought comment on whether section 803 of the Broadband DATA Act is an exclusive remedy for all actions under the Act or whether behavior that may be actionable under existing provisions of the Communications Act or our rules remain subject to enforcement under our general section 503 authority. No commenters responded to this question. The Broadband DATA Act does not state that section 803 should be considered the exclusive mechanism to enforce its provisions. Since the Broadband DATA Act amends the Communications Act, we find that our existing authority under section 503 of the Communications Act allows us to enforce penalties against providers who willfully, knowingly, or recklessly file materially inaccurate or incomplete broadband availability data in violation of the Broadband DATA Act or any other provision of the Communications Act. Retaining section 503 authority will enable the Commission to enforce the requirements of the Broadband DATA Act under section 503 and ensure that providers are appropriately deterred from making inaccurate data submissions.

144. *Penalties for failure to file.* Consistent with the approach the Commission adopted in the *Digital Opportunity Data Collection Order and Further Notice* and the Commission's proposal in the *Second Order and Third Further Notice,* failure to timely file required data in the new Digital Opportunity Data Collection may lead to enforcement action and/or penalties as set forth in the Communications Act and other applicable laws. Timely filed Digital Opportunity Data Collection information is critical for the Commission to ensure its maps are as accurate and up-to-date as possible. The Commission has discretion to make upward or downward adjustments from the base forfeiture amount taking into considerations the facts of each individual case. To the extent a covered provider, however, either fails to file required data, or files incorrect data in a subsequent submission, we will consider each action a separate violation. The City of New York agrees with the Commission's proposal to penalize providers who fail to file the required Digital Opportunity Data Collection information and argues that penalties should be ongoing until the violation is cured. We disagree that the violations should be ''ongoing'' since a failure to take an action (filing a report) is a discrete obligation.

145. *Filing corrected data.* In the *Second Order and Third Further Notice,* the Commission proposed that providers must revise their Digital Opportunity Data Collection filings any time they discover an inaccuracy, omission, or significant reporting error in the original data that they submitted, whether through self-discovery, the crowdsource process, the challenge process, the Commission verification process, or otherwise. ACA Connects and NCTA argue that the Commission should only require providers to correct their Digital Opportunity Data Collection reports for a ''significant reporting error'' that impacts the Commission's coverage maps and not every time a provider's broadband reporting is inaccurate. Given the importance the Commission and Congress have placed on the need for accurate data throughout the Digital Opportunity Data Collection proceeding and implementation of the Broadband DATA Act, we find it necessary to have providers file corrected data when they discover any inaccuracy, omission, or significant reporting error in the original data that they submitted, whether through self-discovery, the crowdsource process, the challenge process, the

Commission verification process, or otherwise, so that the Commission can maintain the most accurate and up-to-date data and maps. We will not excuse providers from updating their data for non-significant reporting errors.

146. While the Commission proposed and sought comment on having providers file corrections within 45 days of their discovery of incorrect data and that corrected filings be accompanied by the same types of certifications that accompany the original filings, in order to avoid confusion and create consistency among Digital Opportunity Data Collection requirements, we find that a 30-day window that aligns with the crowdsourcing and challenge processes is more appropriate and gives adequate time for service providers to make all necessary corrections to their coverage data. USTelecom and WISPA, ACA Connects, and NCTA argue that the Commission should allow providers to correct their filings as part of their next Digital Opportunity Data Collection data submission. As the Commission previously stated, reporting entities that make a good-faith effort to comply fully and carefully with reporting obligations should not be sanctioned if their data prove to be flawed in some way, provided that any errors be quickly and appropriately addressed. Our 30-day window ensures that errors will be ''quickly and appropriately addressed,'' whereas allowing providers to correct inaccurate data as part of their next Digital Opportunity Data Collection data submission could result in data being left inaccurate for as much as six months.

147. Consistent with the crowdsourcing process and challenge process, we require that corrected data be filed within 30 days and that it must include the required certifications. The 30-day period for filing corrected data does not change a provider's obligation to file updated and corrected data within 30 days following any discrepancies found through the crowdsourcing process. As discussed in the *Second Order and Third Further Notice,* once Commission staff evaluates a particular crowdsourced data submission and establishes the need to take a closer look at a provider's data, staff will offer the provider an opportunity to explain any discrepancies between its data and the Commission's analysis. If the provider agrees with staff analysis, then it must refile updated and corrected data within 30 days of that determination. Providers, however, will be allowed to bundle multiple crowdsourced corrections into one filing during the 30-day period. The Commission also proposed that such corrections generally should be forward-looking only and that providers be required to disclose in their next semiannual filing any corrections made as a result of the challenge or crowdsource processes. Commenters agree that corrections should be forward-looking only, and we also adopt this proposal. Finally, the Commission further proposed that, for purposes of calculating the statute of limitations, the one-year limit would begin to accrue on the date of the corrected filing, where the correction was timely submitted under the Commission's rules. We did not receive comments on the proposed statute of limitations, and we adopt that proposal. Where the Commission determines it is appropriate to propose a forfeiture for a violation, it must do so within a one-year statute of limitations. We adopt this proposal in order to ensure the Commission has ample time to consider and review corrected information, and, if necessary, adjudicate enforcement actions.

J. Details on the Creation of the Coverage Maps

148. In this *Third Report and Order,* we adopt the proposal to publish aggregated broadband availability data in the Broadband Map that does not distinguish between fixed or mobile data. We also adopt the proposal to create two other maps that identify carrier-specific fixed and mobile coverage data, including reported technologies and speeds by provider. There is no opposition in the record to these proposals. As such, we find that this approach fulfills the requirements of the Broadband DATA Act to depict ''the extent of the availability of broadband internet access service in the United States, without regard to whether that service is fixed broadband internet access service or mobile broadband internet access service, which shall be based on data collected by the Commission from all providers.''

K. Technical Assistance

149. The Broadband DATA Act requires the Commission to hold annual workshops for Tribal governments in each of the 12 Bureau of Indian Affairs regions. Additionally, the Commission must review the need for continued workshops on an annual basis. In the *Second Order and Third Further Notice,* the Commission sought comment on implementing provisions of the Broadband DATA Act that require the Commission to provide Tribal governments with technical assistance on the collection and submission of data. The Commission sought comment on the type of technical assistance the Tribes need to help them collect and submit data under the Broadband DATA Act's provision allowing State, local, and Tribal government entities that are primarily responsible for mapping or tracking broadband internet access service coverage in their areas to provide verified data for use in the coverage maps. The Commission did not receive any comments regarding tribal workshops.

150. We direct OEA and the Office of Native Affairs and Policy to host at least one workshop in each of the 12 Bureau of Indian Affairs regions within one year following adoption of this *Third Report and Order.* The Offices shall publish a public notice announcing the workshop date, time, location, and agenda prior to each workshop. In addition, following the completion of such workshops, OEA and the Office of Native Affairs and Policy shall, in consultation with Indian Tribes, conduct a review of the need for continued annual workshops.

151. The Broadband DATA Act also requires the Commission to establish a process in which a provider that has fewer than 100,000 active broadband internet access service connections may request and receive assistance from the Commission with respect to GIS data processing to ensure that the provider is able to comply with the Broadband DATA Act in a timely and accurate manner. In the *Second Order and Third Further Notice,* the Commission proposed, subject to receiving adequate funding, to make help-desk support available and to provide clear instructions on the form for the Digital Opportunity Data Collection to aid providers in making their filings. The Commission also sought comment on the extent to which providers will need such technical assistance and any other help that small providers will need to comply with the requirements of the Broadband DATA Act.

152. In response to the *Second Order and Third Further Notice,* Connected Nation suggested that any help-desk solution should include the provision of GIS processing assistance to service providers with fewer than 100,000 active broadband subscriptions. Some commenters recommend that the Commission should, in addition to making help-desk support available, provide small providers with fact sheets, webinars, workshops, and other Digital Opportunity Data Collection education initiatives, flexibility in filing formats, or additional time to file their initial Digital Opportunity Data Collection reports.

153. We adopt the proposals to make help-desk support available to providers

that have fewer than 100,000 active broadband internet access service connections and to provide clear instructions on the form for the Digital Opportunity Data Collection in order to aid small providers in making their filings. We believe these measures will be of significant help to small providers and decline to make additional provisions for those entities at this time but expect to revisit the need for additional measures after we have begun to implement the Digital Opportunity Data Collection.

154. The Broadband DATA Act also requires the Commission to provide technical assistance to consumers and State, local, and Tribal governmental entities with respect to the challenge process. The Broadband DATA Act requires such technical assistance to include detailed tutorials and webinars and the provision of Commission staff to provide assistance, as needed, throughout the entirety of the challenge process. The Commission sought comment on the type of technical assistance that should be provided to assist with the challenge process, taking into account the lack of funding at that time to implement the Broadband DATA Act. The Commission did not receive any comments on this proposal.

155. We direct OEA and Consumer and Governmental Affairs Bureau to make detailed webinars available to explain the challenge process to consumers and State, local, and Tribal governments. Additionally, we direct the Bureau and Office to make available the names and contact information of Commission staff who are available to assist consumers, state, local, and Tribal governments with the challenge process.

L. Form 477 Reforms

156. In the *Digital Opportunity Data Collection Order and Further Notice,* the Commission made several changes to its collection of mobile voice and broadband subscriber data in order to obtain more granular data and to improve the usefulness of such data. The Commission found that state-level aggregation of subscription data significantly limited its usefulness, and that collection of census-tract level data would substantially improve the Commission's ability to conduct more accurate mobile competition analysis, particularly in secondary market transactions. The Broadband DATA Act, however, directs the Commission to ''continue to collect and publicly report subscription data that the Commission collected through the Form 477 broadband deployment service availability process, as in effect on July 1, 2019.'' In the *Second Order and Third Further Notice,* the Commission also proposed to continue the current census-based deployment data collection under Form 477 for at least one reporting cycle after the new granular reporting collection commences and sought comment on sunsetting the fixed broadband deployment aspect of Form 477 and the timing of doing so. In order to adhere to the requirements of the Broadband DATA Act, and to maintain the Commission's flexibility to make informed decisions as it implements the legislation, we require mobile service providers to report both voice and broadband subscription data under the rules in effect on July 1, 2019, for all future Form 477 submissions. We also refrain from committing to a timeframe for sunsetting the Form 477 deployment collection at this time and will revisit this issue after further implementation of the Digital Opportunity Data Collection enables us to make a more informed decision.

1. Mobile Subscriber Data

157. In the *Second Order and Third Further Notice,* the Commission required mobile providers to submit broadband and voice subscriber information at the census-tract level based on the subscriber's place of primary use for postpaid subscribers and based on the subscriber's telephone number for prepaid and resold subscribers. This new collection of subscription data was to take effect for Form 477 submissions filed on June 30, 2020. The mobile subscription reporting requirements under the *Digital Opportunity Data Collection Order and Further Notice* were subject to approval by OMB and would have been effective 30 days after the announcement in the **Federal Register** of OMB approval. OMB approved the collection on March 27, 2020, but the Commission did not publish the approval in the **Federal Register** given the recent enactment of the Broadband DATA Act. The *Second Order and Third Further Notice* requested comment on the Commission's proposed interpretation of the Broadband DATA Act requiring the collection of Form 477 subscription information in effect on July 1, 2019. In response to the *Second Order and Third Further Notice,* AT&T contends that the plain language of the Broadband DATA Act requires the Commission to revert to the Form 477 broadband subscription requirements in effect on July 1, 2019. Similarly, AT&T argues that the Commission should also apply these changes to the collection requirements for mobile voice subscription data to ensure consistent reporting processes and to avoid confusion.

158. We find that the language in the Broadband DATA Act requires the collection of Form 477 subscription information pursuant to the rules in effect on July 1, 2019, which is prior to the Commission's adoption of the August 2019 *Digital Opportunity Data Collection Order and Further Notice.* We therefore require mobile providers to report both voice and broadband subscription data under the rules in effect on July 1, 2019, for all future Form 477 submissions. While the Broadband DATA Act generally addresses reporting requirements for broadband and not voice service, in order to avoid having inconsistent reporting requirements for mobile broadband and voice subscriptions, we find that, going forward, both mobile voice and broadband subscriber data must be reported under the Form 477 rules in effect on July 1, 2019. The Commission did not adopt any changes to fixed subscriber data in the *Second Order and Third Further Notice.*

2. Sunsetting Form 477 Census Block Reporting for Fixed Providers

159. In the *Second Order and Third Further Notice,* the Commission proposed to continue the current census-based deployment data collection under Form 477 for at least one reporting cycle after the new granular reporting collection commences and sought comment on sunsetting the fixed broadband deployment aspect of Form 477 and the timing of doing so. Several commenters support a set timeframe for sunsetting Form 477 fixed deployment reporting, ranging from immediately to one year—or two reporting cycles—after the initiation of the Digital Opportunity Data Collection, including the Fabric. Others urge a more flexible approach. For example, Connected2Fiber argues that the Commission should adopt a more open-ended approach to allow time to compare data from both collections and allow for corrections to the new data. The City of New York further expresses opposition to discontinuing the Form 477 fixed deployment data collection until the Digital Opportunity Data Collection is ''well established.''

160. Accordingly, we adopt the proposal from the *Second Order and Third Further Notice* to continue census-based deployment data collection under Form 477 for at least one reporting cycle after the new granular reporting collection commences, but defer consideration of how many cycles after further

implementation of the Digital Opportunity Data Collection. We agree with Connected2Fiber and the City of New York that we should not adopt a set timeframe for discontinuing the Form 477 fixed deployment collection. It is vital that the Commission have access to current broadband deployment data. We expect the Digital Opportunity Data Collection deployment data to be a substantial improvement over the current Form 477 data. The Digital Opportunity Data Collection is an entirely new collection, however, and we cannot predict at this point, before we have begun to implement it, when it will yield consistently useful data.

M. Rules Adopted Prior to Passage of Broadband DATA Act

161. We note that the *Digital Opportunity Data Collection Order and Further Notice* adopted new rules for the Digital Opportunity Data Collection for inclusion in sections 54.1400–54.1403 of the Commission's rules. We are not deleting the Part 1 and Part 43 rule changes adopted in the *Digital Opportunity Data Collection Order and Further Notice* regarding reporting data on Form 477. In addition, we placed the Digital Opportunity Data Collection rules adopted in the *Digital Opportunity Data Collection Order and Further Notice* in Part 54 of the Commission's rules because of the emphasis on advancing our universal service goals and the planned role that USAC would play in the administration of the Digital Opportunity Data Collection. Without a role for USAC, the rules related to the Digital Opportunity Data Collection are a better fit in Part 1 with the other rules related to broadband data collection. The *Digital Opportunity Data Collection Order and Further Notice* provided that such rules would not be effective until 30 days after announcement in the **Federal Register** that the Office of Management and Budget (OMB) approved the new or modified information collection requirements associated with those rules.

162. However, key provisions in the Part 54 rules adopted in the *Digital Opportunity Data Collection Order and Further Notice* are inconsistent with provisions of the Broadband DATA Act. For example, section 54.1400 (Purpose) and other sections of the rules adopted would have established a role for USAC, which is inconsistent with Congress's prohibition on delegating certain responsibilities to third parties including USAC. In addition, section 54.1401 (Frequency of reports) is inconsistent with the semiannual collection requirement in the Broadband DATA Act. As a result of these inconsistencies, we will not be seeking OMB approval for the Part 54 rules adopted in the *Digital Opportunity Data Collection Order and Further Notice,* and we repeal those rules and find there is good cause to do so without notice and comment because they are inconsistent with the Broadband DATA Act. Accordingly, we delete 47 CFR 54.1400–54.1403.

IV. Final Regulatory Flexibility Analysis

163. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Second Order and Third Further Notice* released in July 2020 in this proceeding. The Commission sought written public comment on the proposals in the *Third Notice,* including comments on the IRFA. The Commission did not receive comments specifically directed as a response to the IRFA. However, the Coalition of Rural Wireless Carriers filed reply comments raising issues pertaining to small entities and the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

164. With the *Third Report and Order,* the Commission takes steps to adopt certain requirements mandated by the Broadband DATA Act, as well as adopting improvements to the collection of data as part of the Digital Opportunity Data Collection. Specifically, we specify which broadband internet access service providers are required to report availability data, limiting the requirements only to facilities-based providers with reporting on a semiannual basis. We also require fixed providers to report the availability of mass-market broadband internet access services on the basis of whether the services are residential or business in nature. In addition, we adopt speed thresholds for reporting fixed services and require reporting on latency for fixed technologies.

165. With regard to reporting by mobile broadband internet access services providers, we require for each 4G LTE or 5G–NR propagation map that a provider submits, a second set of maps showing Reference Signal Received Power (RSRP) signal levels from each active cell site that the Commission may use to prepare ''heat maps'' showing signal strength levels. Further, we require mobile service providers to submit, on a case-by-case basis, their choice of either infrastructure information or on-the-ground test data as part of the Commission's investigation and verification of a mobile service provider's coverage data. In addition, we adopt a user-friendly challenge process for mobile data coverage map submissions, and we require mobile providers to report both voice and broadband subscription data under the rules in effect on July 1, 2019, for all future Form 477 submissions.

166. The Commission also adopts further measures to verify, challenge, and supplement the broadband availability data filed by providers. In particular, we create standards for collecting broadband data from State, local, and Tribal mapping entities and third parties that meet certain criteria, and adopt user-friendly processes for challenges to fixed broadband coverage submissions and to the data in the broadband serviceable location fabric (Fabric) adopted in the *Second Order and Third Further Notice.* Additionally, we adopt standards for identifying ''broadband serviceable'' locations in the Fabric, subject to further refinement in the competitive bidding process for that platform. We also establish standards for enforcement of filing requirements consistent with the applicable provisions of the Broadband DATA Act. Finally, we take steps to provide for continuity with the Form 477 data collection as we transition to the Digital Opportunity Data Collection. We believe our actions in the *Third Report and Order* will increase the usefulness of broadband deployment data made available to the Commission, Congress, the industry, and the public, and satisfy the requirements of the Broadband DATA Act.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

167. The Coalition of Rural Wireless Carriers filed reply comments asserting that additional mapping, drive testing, and the disclosure of detailed infrastructure information would impose additional burdens on small providers and that the Commission did not present significant alternatives in the IRFA to minimize any significant economic impact of the new rules on small entities. While we note the concerns in the Coalition of Rural Wireless Carriers, the Commission's actions in this *Third Report and Order* are primarily in response to the legislative enactment of the Broadband DATA Act, leaving us limited discretion in the adoption of our broadband mapping rules. To the extent we do have discretion in implementing our rules, we used such discretion to develop better quality, more useful, and

more granular reporting of broadband deployment data. We believe that the recordkeeping, reporting, and other compliance requirements adopted in the *Third Report and Order* strike a balance between providing small and other affected entities some flexibility in reporting data while allowing the Commission to obtain the necessary information to meet its obligations under the Broadband DATA Act. In Section E below, we discuss alternatives we considered, but declined to adopt, that would have increased the costs and/or burdens on small entities.

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

168. 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.

169. The Chief Counsel did not file 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

170. 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 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.

171. *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.

172. 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.

173. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, 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.''

1. Broadband Internet Access Service Providers

174. The broadband internet access service provider industry has changed since the definition was introduced in 2007. The data cited below may therefore include entities that no longer provide broadband internet access service and may exclude entities that now provide such service. To ensure that this FRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing broadband internet access service. We note that, although we have no specific information on the number of small entities that provide broadband internet access service over unlicensed spectrum, we included these entities in our Initial Regulatory Flexibility Analysis.

175. *Internet Service Providers (Broadband).* Broadband internet service providers include wired (*e.g.,* cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure and fall in the category of Wired Telecommunication Carriers. 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 size standard for this category classifies a business as small if it has 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. Consequently, under this size standard the majority of firms in this industry can be considered small.

176. *Internet Service Providers (Non-Broadband).* internet access service providers such as Dial-up internet service providers, VoIP service providers using client-supplied telecommunications connections, and internet service providers using client-supplied telecommunications connections (*e.g.,* dial-up ISPs) fall in the category of All Other Telecommunications. The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with gross 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 these firms, a total of 1,400 had gross annual receipts of less than $25 million. Consequently, under this size standard a majority of firms in this industry can be considered small.

2. Wireline Providers

177. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''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 communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of

services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies 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.

178. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 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 category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

179. *Incumbent Local Exchange Carriers* (*Incumbent LECs*). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. According to U.S. Census Bureau data for 2012, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, 1,307 Incumbent LECs reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA's size standard, the majority of Incumbent LECs can be considered small entities.

180. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers and under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on these data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

181. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules consists of all such companies having 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

182. *Operator Service Providers* (*OSPs*). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable size standard under SBA rules is the category of Wired Telecommunications Carriers. Under that size standard such a business is small if it has 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 Commission estimates that the majority of firms in this industry can be considered small. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities.

183. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. The applicable SBA size standard consists of all such companies having 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities.

3. Wireless Providers—Fixed and Mobile

184. The broadband internet access service provider category covered by these new rules may cover multiple wireless firms and categories of regulated wireless services. Thus, to the extent the wireless services listed below are used by wireless firms for broadband internet access service, the actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction

does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

185. *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 had employment of 999 or fewer employees and 12 had employment of 1,000 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.

186. 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.

187. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. In the Commission's auction for geographic area licenses in the WCS, there were seven winning bidders that qualified as ''very small business'' entities and one that qualified as a ''small business'' entity.

188. *1670–1675 MHz Services.* This service can be used for fixed and mobile uses, except aeronautical mobile. An auction for one license in the 1670–1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

189. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, 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 fewer than 1,000 employees and 12 firms had 1,000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

190. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards, defining ''small entity'' in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40% of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

191. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

192. *Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million

size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

193. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band and qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small businesses.

194. In addition, there are numerous incumbent site-by-site SMR licenses and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees, which is the SBA-determined size standard. We assume, for purposes of this analysis, that all of the remaining extended implementation authorizations are held by small entities, as defined by the SBA.

195. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business, or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

196. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* An auction of 700 MHz licenses commenced January 24, 2008 and closed on March 18, 2008, which included, 176 Economic Area licenses in the A Block, 734 Cellular Market Area licenses in the B Block, and 176 EA licenses in the E Block. Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years) won 49 licenses. Thirty-three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) won 325 licenses.

197. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block and one nationwide license in the D Block. The auction concluded on March 18, 2008, with three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

198. *700 MHz Guard Band Licensees.* In 2000, in the *700 MHz Guard Band Order,* the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

199. *Air-Ground Radiotelephone Service.* The Commission has previously used the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite). 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 had fewer than 1,000 employees and 12 had employment of 1,000 employees or more. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

200. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 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 exceeding $15

million. These definitions were approved by the SBA. In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

201. Advanced Wireless Services (AWS (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)). For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For AWS–2 and AWS–3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but proposes to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

202. *3650–3700 MHz Band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, using contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). As of April 2010, more than 1,270 licenses have been granted and more than 7,433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licenses. However, we estimate that the majority of these licensees are internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

203. *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 and 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 fewer than 1,000 employees and 12 had employment of 1,000 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.

204. 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 adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

205. *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)).

206. *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, we find that there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

207. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (1) 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% discount on its winning bid; (2) 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% discount on its winning bid; and (3) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35% 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 four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

208. *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.

209. In addition to U.S. Census Bureau data, the Commission's Universal Licensing System indicates that as of March 2019 there were 1,300 licensees holding over 2,190 active EBS licenses. The Commission estimates that of these 2,190 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

4. Satellite Service Providers

210. *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 a total of 333 firms 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.

211. *All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments that are 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 gross 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 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, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

5. Cable Service Providers

212. Because section 706 of the Act requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

213. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA size standard for this industry establishes as small, any company in this category that has annual receipts of $41.5 million or less. According to 2012 U.S. Census Bureau data, 367 firms operated for the entire year. Of that number, 319 operated with annual receipts of less than $25 million a year and 48 firms operated with annual receipts of $25 million or more. Based on this data, the Commission estimates that the majority of firms in this industry are small.

214. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are 4,600 active cable systems in the United States. Of this total, all but five cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

215. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' As of 2019, there were approximately 48,646,056 basic cable video subscribers in the United States. Accordingly, an operator serving fewer than 486,460 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but five incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

6. All Other Telecommunications

216. *Electric Power Generators, Transmitters, and Distributors.* This U.S. industry is comprised of establishments that are 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 closest applicable SBA category is ''All Other Telecommunications.'' The SBA's small business size standard for ''All Other Telecommunications'' consists of all such firms with gross 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 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. Consequently, we estimate that under this category and the associated size standard the majority of these firms can be considered small entities.

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

217. We expect the rules adopted in the *Third Report and Order* will impose new or additional reporting, recordkeeping, and/or other compliance obligations on small entities. Specifically, we establish new reporting and disclosure requirements for fixed and mobile broadband providers to facilitate compliance with the Broadband DATA Act. For example, we require fixed providers to report the availability of mass-market broadband internet access services on the basis of whether the services are residential or business in nature. We also adopt speed thresholds for reporting fixed broadband services and require reporting on latency for fixed technologies. With regard to reporting by mobile broadband internet access services providers, we require for each 4G LTE or 5G–NR propagation map that a provider submits, a second set of maps showing Reference Signal Received Power (RSRP) signal levels from each active cell site that the Commission may use to prepare ''heat maps,'' showing signal strength levels. Further, we require mobile service providers to submit, on a case-by-case basis, their choice of either infrastructure information or on-the-ground test data as part of a Commission investigation and verification of a mobile service provider's coverage data. Finally, we require mobile providers to report both voice and broadband subscription data under the rules in effect on July 1, 2019, for all future Form 477 submissions.

218. We also adopt measures to verify, challenge, and supplement the broadband availability data filed by providers, which create new reporting, recordkeeping, and/or other compliance obligations for small entities and other providers. For example, we require all providers to provide a certification as to the accuracy of a provider's semiannual filling from a certified professional engineer or corporate engineering officer that is employed by the provider and has direct knowledge of, or responsibility for, the generation of the provider's Digital Opportunity Data Collection filing. Further, we create standards for collecting broadband data from State, local, and Tribal mapping entities and third parties that meet certain criteria, and adopt user friendly processes for challenges to fixed broadband coverage submissions and to the data in Fabric adopted in the *Second Order and Third Further Notice.* Finally, we establish standards for the enforcement of filing requirements consistent with the applicable provisions of the Broadband DATA Act.

219. The requirements we adopt in the *Third Report and Order* continue the Commission's actions to comply with the Broadband DATA Act and develop better quality, more useful, and more granular broadband deployment data to advance our statutory obligations and continue our efforts to close the digital divide. We conclude it is necessary to adopt these rules to produce broadband deployment maps that will allow the Commission to precisely target scarce universal service dollars to where broadband service is lacking. We are cognizant, however, of the need to ensure that the benefits resulting from use of the data outweigh the reporting burdens imposed on small entities. The Commission believes that any additional burdens imposed by our revised reporting approach for providers are outweighed by the significant benefit to be gained from more precise broadband deployment data. We are likewise cognizant that small entities will incur costs and may have to hire attorneys, engineers, consultants or other professionals to comply with the *Third Report and Order.* Although the Commission cannot quantify the cost of compliance with the requirements in the *Third Report and Order,* we believe the reporting and other requirements we have adopted are necessary to comply with the Broadband DATA Act and ensure the Commission obtains complete and accurate broadband coverage maps.

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

220. 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. The Commission has considered the comments in the record and is mindful of the time, money, and resources that some small entities will incur to comply with requirements in the *Third Report and Order.* In reaching the requirements we adopted in the *Third Report and Order,* there were various approaches and alternatives that the Commission considered but rejected which prevented small entities from incurring additional burdens and economic impact. For example, we declined to collect data on non-mass market broadband services such as might be purchased by healthcare organizations, schools and libraries, and government entities, in addition to mass market service data required in the Digital Opportunity Data Collection, although a number of comments supported requiring such a collection. We also declined to adopt any of the alternative tiers for reporting download and upload speeds for broadband internet access service offered at speeds below 25/3 Mbps by fixed broadband providers as proposed in comments. Instead, we adopted the two tiers the Commission proposed in the *Second Order and Third Further Notice* which use the same speed floor as existing reporting for Form 477 data and will maintain consistency for providers with that collection and provide information on the availability of services offered at a wide range of speeds. Further, we declined to adopt proposals to require fixed broadband providers to report more detailed data on latency than what the Commission proposed in the *Second Order and Third Further Notice.* Lastly, as it pertains to the standards for the collection and reporting of data for mobile broadband internet access service, we also declined to require mobile providers to submit additional coverage maps based on different speed, cell edge probability, or cell loading values.

221. As part of the Commission's process for verifying broadband availability data submitted by providers, we adopted the requirement that service providers submit, upon the request of the Commission staff on a case-by-case

basis as part of an inquiry concerning a mobile service provider's coverage data, either infrastructure information or on-the-ground test data for the location(s) under examination, rather than mandating the submission of infrastructure information by providers and on a specific reporting interval. With this approach, we provide small entities and other providers the flexibility to choose the type of data reporting that best fits their circumstances and such reporting is only required if there is an inquiry from Commission staff. To substantiate the accuracy of data submissions by mobile and fixed service providers, the *Third Report and Order* requires providers to submit a certification from a qualified engineer that the engineer has reviewed and supports the submission and attests that the statements of fact contained in the submission are true and correct and prepared in accordance with the service provider's ordinary course of network design and engineering. To meet this requirement, small entities can use an existing employee who is a certified professional engineer and are not required to hire a new in-house engineer or an engineer consultant in order to certify its data submissions which could have a significant economic impact.

222. The Broadband DATA Act requires the Commission to adopt rules to establish a user-friendly challenge process through which consumers, State, local, and Tribal governmental entities, and other entities or individuals may submit coverage data to challenge the accuracy of the coverage maps, broadband availability information submitted by providers, or information included in the Fabric. The challenge process rules adopted by the Commission have implications for small entities as a party submitting a challenge or as a party being challenged. We believe our challenge process rules adopting a single online platform for use by all parties for submitting and tracking challenges and crowdsource information, implementing an automatic notification to the challenged party when a challenge has been submitted, and adopting a 60 day response period for the challenged party, rather than 30 days as proposed in the *Second Order and Third Further Notice,* are user friendly and cost minimizing steps that will benefit small entities.

223. Other steps taken by the Commission to minimize the compliance burdens on small entities include the technical assistance that the Commission staff will provide pursuant to the requirements of the Broadband DATA Act. In a joint effort, OEA and the Consumer and Governmental Affairs Bureau (CGB) will host at least one workshop in each of the 12 Bureau of Indian Affairs regions within one year following adoption of the *Third Report and Order.* The Bureau and Office shall publish a public notice announcing the workshop date, time, location, and agenda prior to each workshop. Next, the Broadband DATA Act requires the Commission to establish a process in which a provider that has fewer than 100,000 active broadband internet access service connections may request and receive assistance from the Commission with respect to GIS data processing to ensure that the provider is able to comply with the Broadband DATA Act in a timely and accurate manner. Therefore, we will make help-desk support available to providers that have fewer than 100,000 active broadband internet access service connections and provide clear instructions on the form for the Digital Opportunity Data Collection in order to aid small providers in making their filings.

224. The Broadband DATA Act also requires the Commission to provide technical assistance to consumers and State, local, and Tribal governmental entities—some of which include small entities, with respect to the challenge process. Such technical assistance must include detailed tutorials and webinars and must make Commission staff available to provide assistance, as needed, throughout the entirety of the challenge process. Accordingly, a joint effort OEA and CGB will make detailed webinars available to explain the challenge process to consumers and State, local, and Tribal governments. Additionally, the names and contact information of Commission staff who are available to assist consumers, State, local, and Tribal governments with the challenge process will be made available.

225. The Commission believes that the actions we have taken in the *Third Report and Order* and discussed herein, to ensure that the Commission has precise, accurate data on broadband deployment, and the resources that we will provide small entities to assist with compliance, strike the appropriate balance to carry out our obligations under the Broadband DATA Act and to minimize the economic impact for small entities.

A. Report to Congress

226. The Commission will send a copy of the *Third Report and Order,* including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Third Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Third Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

V. Procedural Matters

227. *Final Regulatory Flexibility Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Third Report and Order* on small entities. The FRFA is set forth in Appendix B.

228. *Paperwork Reduction Act.* This document does not contain new or modified information collection requirements 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).

229. *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 Order on Remand to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

230. *Contact Person.* For further information about this proceeding, contact Kirk Burgee, FCC Wireline Competition Bureau, Competition Policy Division, 45 L Street NE, Washington, DC 20554, (202) 418–1599, *Kirk.Burgee@fcc.gov,* or Garnet Hanly, FCC Wireless Telecommunications Bureau, Competition Policy Division, 45 L Street NE, Washington, DC 20554, (202) 418–0995, *Garnet.Hanly@fcc.gov.*

VI. Ordering Clauses

231. Accordingly, *it is ordered* that, pursuant to sections 1–4, 7, 201, 254, 301, 303, 309, 319, 332, and 641–646 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 157, 201, 254, 301, 303, 309, 319, 332, and 641–

646, this *Third Report and Order is adopted.*

232. *It is further ordered* that Parts 1 and 54 of the Commission's rules *are amended* as set forth in Appendix A of the *Third Report and Order.*

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

234. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Third Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

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

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Broadband, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 54

Reporting and recordkeeping requirements, 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 § 1.80 by revising Table 1 to paragraph (b)(10) to read as follows:

* * * * *

TABLE 1 TO PARAGRAPH (b)(10)—BASE AMOUNTS FOR SECTION 503 FORFEITURES

Forfeitures	Violation amount
Misrepresentation/lack of candor	(1)
Failure to file required DODC required forms, and/or filing materially inaccurate or incomplete DODC information	$15,000
Construction and/or operation without an instrument of authorization for the service	10,000
Failure to comply with prescribed lighting and/or marking	10,000
Violation of public file rules	10,000
Violation of political rules: Reasonable access, lowest unit charge, equal opportunity, and discrimination	9,000
Unauthorized substantial transfer of control	8,000
Violation of children's television commercialization or programming requirements	8,000
Violations of rules relating to distress and safety frequencies	8,000
False distress communications	8,000
EAS equipment not installed or operational	8,000
Alien ownership violation	8,000
Failure to permit inspection	7,000
Transmission of indecent/obscene materials	7,000
Interference	7,000
Importation or marketing of unauthorized equipment	7,000
Exceeding of authorized antenna height	5,000
Fraud by wire, radio or television	5,000
Unauthorized discontinuance of service	5,000
Use of unauthorized equipment	5,000
Exceeding power limits	4,000
Failure to respond to Commission communications	4,000
Violation of sponsorship ID requirements	4,000
Unauthorized emissions	4,000
Using unauthorized frequency	4,000
Failure to engage in required frequency coordination	4,000
Construction or operation at unauthorized location	4,000
Violation of requirements pertaining to broadcasting of lotteries or contests	4,000
Violation of transmitter control and metering requirements	3,000
Failure to file required forms or information	3,000
Failure to make required measurements or conduct required monitoring	2,000
Failure to provide station ID	1,000
Unauthorized pro forma transfer of control	1,000
Failure to maintain required records	1,000

* * * * *

■ 3. Amend § 1.7001 by revising paragraph (a)(16) to read as follows:

§ 1.7001 Scope and content of filed reports.

(a) * * *

(16) *Provider.* A facilities-based provider of fixed or mobile broadband internet access service.

* * * * *

■ 4. Amend § 1.7004 by:

■ a. Adding a new sentence at the end of paragraph (c)(1) introductory text;

■ b. Redesignating paragraphs (c)(1)(i) and (ii) as paragraphs (iii) and (iv) and adding new paragraphs (c)(1)(i) and (ii);

■ c. Adding paragraphs (c)(2)(ii)(E) and (c)(3)(v); and

■ d. Revising paragraph (d).

The revisions and additions read as follows:

§ 1.7004 Scope, content, and frequency of Digital Opportunity Data Collection filings.

* * * * *

(c) * * *

(1) * * * In addition, fixed broadband internet service providers shall indicate, for each polygon shapefile or location they submit in the Digital Opportunity Data Collection, whether the reported service is available to residential customers and/or business customers.

(i) Each provider of fixed broadband internet access service shall report the maximum advertised download and upload speeds associated with its broadband internet access service available in an area. However, for service offered at speeds below 25 Mbps downstream/3 Mbps upstream, providers shall report the maximum advertised download and upload speeds associated with the service using two speed tiers: One for speeds greater than 200 kbps in at least one direction and less than 10 Mbps downstream/1 Mbps upstream, and another for speeds greater than or equal to 10 Mbps downstream/1 Mbps upstream and less than 25 Mbps downstream/3 Mbps upstream.

(ii) Each provider of fixed broadband internet access service shall indicate in its Digital Opportunity Data Collection filing whether the network round-trip latency associated with each maximum speed combination reported in a particular geographic area is less than or equal to 100 milliseconds (ms), based on the 95th percentile of measurements.

* * * * *

(2) * * *

(ii) * * *

(E) The geographic coordinates.

* * * * *

(3) * * *

(v) For each 4G LTE or 5G–NR propagation map that a provider submits, the provider also must submit a second set of maps showing Reference Signal Received Power (RSRP) signal levels in dBm, as would be measured at the industry standard of 1.5 meters above ground level (AGL), from each active cell site. A second set of maps showing Received Signal Strength Indicator (RSSI) signal levels for each 3G propagation map a provider submits is only required in areas where 3G is the only technology the provider offers. The RSSI and RSRP values should be provided in 10 dB increments or finer beginning with a maximum value of −50 dBm and continuing to −120 dBm.

* * * * *

(d) Providers shall include in each Digital Opportunity Data Collection filing a certification signed by a corporate officer of the provider that the officer has examined the information contained in the submission and that, to the best of the officer's actual knowledge, information, and belief, all statements of fact contained in the submission are true and correct. All providers also shall submit a certification of the accuracy of its submissions by a qualified engineer. The engineering certification shall state that the certified professional engineer or corporate engineering officer is employed by the provider and has direct knowledge of, or responsibility for, the generation of the provider's Digital Opportunity Data Collection filing. If a corporate officer is also an engineer and has the requisite knowledge required under the Broadband DATA Act, a provider may submit a single certification that fulfills both requirements. The certified professional engineer or corporate engineering officer shall certify that he or she has examined the information contained in the submission and that, to the best of the engineer's actual knowledge, information, and belief, all statements of fact contained in the submission are true and correct, and in accordance with the service provider's ordinary course of network design and engineering.

■ 5. Amend § 1.7006 by adding paragraphs (c) through (f) to read as follows:

§ 1.7006 Data Verification.

* * * * *

(c) *Mobile service verification process for mobile providers.* Mobile service providers shall submit either infrastructure information or on-the-ground test data in response to a request by Commission staff as part of their inquiry to independently verify the accuracy of the mobile provider's coverage propagation models and maps. In addition to submitting either on-the-ground data or infrastructure data, a provider may also submit data collected from transmitter monitoring software. A provider must submit its data, in the case of both infrastructure information and on-the-ground data, within 60 days of receiving a Commission staff request. Regarding on-the-ground data, a provider must submit evidence of network performance based on a sample of on-the-ground tests that is statistically appropriate for the area tested.

(d) *Fixed service challenge process.* State, local, and Tribal governmental entities, consumers, and other entities or individuals may submit data in an online portal to challenge the accuracy of the coverage maps at a particular location, any information submitted by a provider regarding the availability of broadband internet access service, or the Fabric.

(1) Challengers must provide in their submissions:

(i) Name and contact information (*e.g.,* address, phone number, email);

(ii) The street address or geographic coordinates (latitude/longitude) of the location(s) at which broadband internet access service coverage is being challenged;

(iii) Name of provider whose reported coverage information is being challenged;

(iv) Category of dispute, selected from pre-established options on the portal;

(v) For consumers challenging availability data or the coverage maps, evidence and details of a request for service (or attempted request for service), including the date, method, and content of the request and details of the response from the provider, or evidence showing no availability at the disputed location (*e.g.,* screen shot, emails);

(vi) For government or other entities, evidence and details about the dispute, including: (A) The challenger's methodology, (B) the basis for determinations underlying the challenge, and (C) communications with provider, if any, and outcome;

(vii) For challengers disputing locations in the Broadband Location Fabric, details and evidence about the disputed location;

(viii) For customer or potential customer availability or coverage map challengers, a representation that the challenger resides or does business at the location of the dispute or is authorized to request service there; and

(ix) A certification from an individual or an authorized officer or signatory of a challenger that the person examined the information contained in the challenge and that, to the best of the person's actual knowledge, information, and belief, all statements of fact contained in the challenge are true and correct.

(2) The online portal shall alert a provider if there has been a challenge with all required elements submitted against it.

(3) For availability and coverage map challenges, within 60 days of receiving an alert, a provider shall reply in the portal by:

(i) Accepting the allegation(s) raised by the challenger, in which case the provider shall submit a correction for the challenged location in the online portal within 30 days of its portal reply; or

(ii) Denying the allegation(s) raised by the challenger, in which the case the provider shall provide evidence, in the

online portal and to the challenger, that the provider serves (or could and is willing to serve) the challenged location. If the provider denies the allegation(s) raised by the challenger, then the provider and the challenger shall have 60 days after the provider submits its reply to attempt to resolve the challenge.

(4) A provider's failure to respond to a challenge to its reported coverage data within the applicable timeframes shall result in a finding against the provider, resulting in mandatory corrections to the provider's Digital Opportunity Data Collection information to conform to the challenge. Providers shall submit any such corrections within 30 days of the missed reply deadline or the Commission will make the corrections on its own and incorporate such change into the coverage maps.

(5) Once a challenge containing all the required elements is submitted in the online portal, the location shall be identified on the coverage maps as ''in dispute/pending resolution.''

(6) If the parties are unable to reach consensus within 60 days after submission of the provider's reply in the portal, then the affected provider shall report the status of efforts to resolve the challenge in the online portal, after which the Commission, will review the evidence and make a determination, either:

(i) In favor of the challenger, in which case the provider shall update its Digital Opportunity Data Collection information within 30 days of the decision; or

(ii) In favor of the provider, in which case the location will no longer be subject to the ''in dispute/pending resolution'' designation on the coverage maps.

(7) In consumer challenges to availability and coverage map data, a consumer's challenge must make an initial showing, by a preponderance of the evidence, that a provider's data are inaccurate; a provider must then provide evidence showing, by a preponderance of the evidence, that its reported data are accurate.

(8) In challenges to availability and coverage data by governmental (State, local, Tribal), or other entities, the challenger must make a detailed, clear and methodologically sound showing, by clear and convincing evidence, that a provider's data are inaccurate.

(9) For challenges to the Fabric, after a challenge has been filed containing the required information in paragraph (d)(1) of this section, the provider will receive a notice of the challenge from the online portal and can respond to the challenge in the online portal, but is not required to do so, and the Commission shall seek to resolve such challenges within 60 days of receiving the challenge filing in the online portal.

(10) Government entities or other entities may file challenges at multiple locations in a single challenge, but each challenge must contain all of the requirements set forth in (d)(1) of this section.

(11) The Commission shall make public information about the location that is the subject of the challenge (including the street address and/or coordinates (latitude and longitude)), the name of the provider, and any relevant details concerning the basis for the challenge.

(e) *Mobile service challenge process for consumers.* Consumers may submit data to challenge the accuracy of mobile broadband coverage maps. Consumers may challenge mobile coverage data based on lack of service or on poor service quality such as slow delivered user speed.

(1) Consumer challengers must provide in their submissions:

(i) Name and contact information (*e.g.,* address, phone number, and/or email address);

(ii) The name of the provider being challenged;

(iii) Speed test data. Consumers must take all speed tests outdoors. Consumers shall indicate whether each test was taken in an in-vehicle mobile or outdoor pedestrian environment. Consumers must use a speed test application that has been designated by Office of Engineering and Technology, in consultation with Office of Economics and Analytics and the Wireless Telecommunications Bureau, for use in the challenge process;

(iv) A certification that the challenger is a subscriber or authorized user of the provider being challenged;

(iv) A certification that the speed test measurements were taken outdoors; and

(v) A certification that, to the best of the person's actual knowledge, information, and belief, the handset and the speed test application are in ordinary working order and all statements of fact contained in the submission are true and correct.

(2) The Office of Economics and Analytics, in consultation with the Wireless Telecommunications Bureau, will determine the threshold number of mobile consumer challenges within a specified area that will constitute a cognizable challenge that triggers the obligation for a provider to respond.

(3) For areas with a cognizable challenge, providers either must submit a rebuttal to the challenge within a 60-day period of being notified of the challenge or concede and have the challenged area identified on the mobile coverage map as an area that lacks sufficient service.

(4) To dispute a challenge, a mobile service provider must submit on-the-ground test data or infrastructure data to verify its coverage map(s) in the challenged area. The Office of Economics and Analytics and the Wireless Telecommunications Bureau will develop the specific requirements and methodologies that providers must use in conducting on-the-ground testing and in providing infrastructure data. To the extent that a service provider believes it would be helpful to the Commission in resolving a challenge, it may choose to submit other data in addition to the data initially required, including but not limited to either infrastructure or on-the-ground testing (to the extent such data are not the primary option chosen by the provider) or other types of data such as data collected from network transmitter monitoring systems or software, or spectrum band-specific coverage maps. Such other data must be submitted at the same time as the primary on-the-ground testing or infrastructure rebuttal data submitted by the provider. If needed to ensure an adequate review, the Office of Economics and Analytics may also require that the provider submit other data in addition to the data initially submitted, including but not limited to either infrastructure or on-the-ground testing data (to the extent not the option initially chosen by the provider) or data collected from network transmitter monitoring systems or software (to the extent available in the provider's network).

(5) If a mobile service provider that has failed to rebut a challenge subsequently takes remedial action to improve coverage at the location of the challenge, the provider must notify the Commission of the actions it has taken to improve its coverage and provide either on-the-ground test data or infrastructure data to verify its improved coverage.

(6) In cases where a mobile service provider concedes or loses a challenge, the provider must file, within 30 days, geospatial data depicting the challenged area that has been shown to lack sufficient service. Such data will constitute a correction layer to the provider's original propagation model-based coverage map, and Commission staff will use this layer to update the broadband coverage map. In addition, to the extent that a provider does not later improve coverage for the relevant technology in an area where it conceded or lost a challenge, it must include this

correction layer in its subsequent Digital Opportunity Data Collection filings to indicate the areas shown to lack service.

(f) *Mobile service challenge process for State, local, and Tribal governmental entities; and other entities or individuals.* State, local, and Tribal governmental entities and other entities or individuals may submit data to challenge accuracy of mobile broadband coverage maps. They may challenge mobile coverage data based on lack or service or poor service quality such as slow delivered user speed.

(1) State, local, and Tribal governmental entities and other entity or individual challengers must provide in their submissions:

(i) Government and other entity challengers may use their own software to collect data for the challenge process. When they submit their data, however, it must contain the following metrics for each test:

(A) The geographic coordinates of the test(s) (*i.e.,* latitude/longitude);

(B) The name of the service provider being tested;

(C) The consumer-grade device type(s), brand/model, and operating system used for the test;

(D) The download and upload speeds;

(E) The latency data;

(F) The date and time of the test;

(G) Whether the test was taken in an in-vehicle mobile or outdoor, pedestrian stationary environment, and if mobile, whether the test was conducted with the antenna outside of the vehicle;

(H) For an in-vehicle test, the vehicle speed the vehicle was traveling when the test was taken, if available;

(I) The signal strength, if available;

(J) An indication of whether the test failed to establish a connection with a mobile network at the time and place it was initiated;

(K) The network technology (*e.g.,* LTE, 5G) and spectrum band(s) used for the test; and

(L) The location of the server to which the test connected;

(ii) A complete description of the methodology(ies) used to collect their data; and

(iii) Challengers must substantiate their data through the certification of a qualified engineer or official.

(2) Challengers must conduct speed tests using a device advertised by the challenged service provider as compatible with its network and must take all speed tests outdoors.

(3) The Office of Economics and Analytics, in consultation with the Wireless Telecommunications Bureau, will determine the threshold number of challenges within a specified area that will constitute a cognizable challenge that triggers the obligation for a provider to respond.

(4) For areas with a cognizable challenge, providers either must submit a rebuttal to the challenge within a 60-day period of being notified of the challenge or concede and have the challenged area identified on the mobile coverage map as an area that lacks sufficient service.

(5) To dispute a challenge, a mobile service provider must submit on-the-ground test data or infrastructure data to verify its coverage map(s) in the challenged area. The Office of Economics and Analytics and the Wireless Telecommunications Bureau will develop the specific requirements and methodologies that providers must use in conducting on-the-ground testing and in providing infrastructure data. To the extent that a service provider believes it would be helpful to the Commission in resolving a challenge, it may choose to submit other data in addition to the data initially required, including but not limited to either infrastructure or on-the-ground testing (to the extent such data are not the primary option chosen by the provider) or other types of data such as data collected from network transmitter monitoring systems or software or spectrum band-specific coverage maps. Such other data must be submitted at the same time as the primary on-the-ground testing or infrastructure rebuttal data submitted by the provider. If needed to ensure an adequate review, the Office of Economics and Analytics may also require that the provider submit other data in addition to the data initially submitted, including but not limited to either infrastructure or on-the-ground testing data (to the extent not the option initially chosen by the provider) or data collected from network transmitter monitoring systems or software (to the extent available in the provider's network).

(6) If a provider that has failed to rebut a challenge subsequently takes remedial action to improve coverage at the location of the challenge, the provider must notify the Commission of the actions it has taken to improve its coverage and provide either on-the-ground test data or infrastructure data to verify its improved coverage.

(7) In cases where a mobile service provider concedes or loses a challenge, the provider must file, within 30 days, geospatial data depicting the challenged area that has been shown to lack service. Such data will constitute a correction layer to the provider's original propagation model-based coverage map, and Commission staff will use this layer to update the broadband coverage map. In addition, to the extent that a provider does not later improve coverage for the relevant technology in an area where it conceded or lost a challenge, it must include this correction layer in its subsequent Digital Opportunity Data Collection filings to indicate the areas shown to lack service.

■ 6. Amend § 1.7008 by revising paragraphs (d)(1) introductory text and (d)(2) and adding paragraph (d)(3) as follows:

§ 1.7008 Creation of broadband internet access service coverage maps.

* * * * *

(d)(1) The Commission shall collect verified data for use in the coverage maps from:

* * * * *

(2) To the extent they choose to file verified data, such government entities and third parties shall follow the same filing process as providers submitting their broadband internet access service data in the Digital Opportunity Data Collection portal.

(3) Providers shall review the verified data submitted by governments and third parties in the online portal, work with the submitter to resolve any coverage discrepancies, make any corrections they deem necessary based on such review, and submit any updated data to the Commission within 60 days of the date that the provider is notified that the data has been submitted in the online portal by the government entity or third party.

■ 7. Revise § 1.7009 to read as follows:

§ 1.7009 Enforcement.

(a) It shall be unlawful for an entity or individual to willfully and knowingly, or recklessly, submit information or data as part of the Digital Opportunity Data Collection that is materially inaccurate or incomplete with respect to the availability or the quality of broadband internet access service. Such action may lead to enforcement action and/or penalties as set forth in the Communications Act and other applicable laws.

(b) Failure to make the Digital Opportunity Data Collection filing in accordance with the Commission's rules and the instructions to the Digital Opportunity Data Collection may lead to enforcement action pursuant to the Communications Act of 1934, as amended, and any other applicable law.

(c) For purposes of this section, ''materially inaccurate or incomplete'' means a submission that contains omissions or incomplete or inaccurate information that the Commission finds has a substantial impact on its collection and use of the data collected

in order to comply with the requirements of 47 U.S.C. 641–646.

(d) Providers must file corrected data when they discover inaccuracy, omission, or significant reporting error in the original data that they submitted, whether through self-discovery, the crowdsource process, the challenge process, the Commission verification process, or otherwise.

(1) Providers must file corrections within 30 days of their discovery of incorrect or incomplete data; and

(2) The corrected filings must be accompanied by the same types of certifications that accompany the original filings.

PART 54—[AMENDED]

■ 8. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, and 1601–1609, unless otherwise noted.

Subpart N—[Removed]

■ 9. Remove subpart N, consisting of §§ 54.1400 through 54.1403.

[FR Doc. 2021–04998 Filed 4–6–21; 8:45 am]

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FEDERAL REGISTER

Vol. 86 Wednesday,
No. 65 April 7, 2021

Part III

The President

Proclamation 10173—Days of Remembrance of Victims of the Holocaust, 2021
Proclamation 10174—Honoring United States Capitol Police Officers

Federal Register
Vol. 86, No. 65
Wednesday, April 7, 2021

Presidential Documents

Title 3—

The President

Proclamation 10173 of April 2, 2021

Days of Remembrance of Victims of the Holocaust, 2021

By the President of the United States of America

A Proclamation

On Yom HaShoah—Holocaust Remembrance Day—we stand in solidarity with the Jewish people in America, Israel, and around the world to remember and reflect on the horrors of the Holocaust. An estimated six million Jews perished alongside millions of other innocent victims—Roma and Sinti, Slavs, disabled persons, LGBTQ+ individuals, and others—systematically murdered by the Nazis and their collaborators in one of the cruelest and most heinous campaigns in human history.

We honor the memories of precious lives lost, contemplate the incomprehensible wound to our humanity, mourn for the communities broken and scattered, and embrace those who survived the Holocaust—some of whom are still with us today, continuing to embody extraordinary resilience after all these years. Having borne witness to the depths of evil, these survivors remind us of the vital refrain: ''never again.'' The history of the Holocaust is forever seared into the history of humankind, and it is the shared responsibility of all people to ensure that the horrors of the Shoah can never be erased from our collective memory.

It is painful to remember. It is human nature to want to leave the past behind. But in order to prevent a tragedy like the Holocaust from happening again, we must share the truth of this dark period with each new generation. All of us must understand the depravity that is possible when governments back policies fueled by hatred, when we dehumanize groups of people, and when ordinary people decide that it is easier to look away or go along than to speak out. Our children and grandchildren must learn where those roads lead, so that the commitment of ''never again'' lives strongly in their hearts.

I remember learning about the horrors of the Holocaust from my father when I was growing up, and I have sought to impart that history to my own children and grandchildren in turn. I have taken them on separate visits to Dachau, so that they could see for themselves what happened there, and to impress on them the urgency to speak out whenever they witness anti-Semitism or any form of ethnic and religious hatred, racism, homophobia, or xenophobia. The legacy of the Holocaust must always remind us that silence in the face of such bigotry is complicity—remembering, as Rabbi Abraham Joshua Heschel wrote, that there are moments when ''indifference to evil is worse than evil itself.''

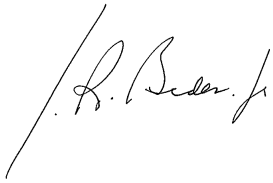
Those who survived the Holocaust are an inspiration to every single one of us. Yet they continue to live with the unique mental and physical scars from the unconscionable trauma of the Holocaust, with many survivors in the United States living in poverty. When I served as Vice President, I helped secure Federal funding for grants to support Holocaust survivors—but we must do more to pursue justice and dignity for survivors and their heirs. We have a moral imperative to recognize the pain survivors carry, support them, and ensure that their memories and experiences of the Holocaust are neither denied nor distorted, and that the lessons for all humanity are never forgotten.

Holocaust survivors and their descendants—and each child, grandchild, and great-grandchild of those who lost their lives—are living proof that love and hope will always triumph over murder and destruction. Every child and grandchild of a survivor is a testament to resilience, and a living rebuke to those who sought to extinguish the future of the Jewish people and others who were targeted.

Yom HaShoah reminds us not only of the Jewish victims of the Holocaust, but also reinforces our ongoing duty to counter all forms of dehumanizing bigotry directed against the LGBTQ+, disability, and other marginalized communities. While hate may never be permanently defeated, it must always be confronted and condemned. When we recognize the fundamental human dignity of all people, we help to build a more just and peaceful world. In the memory of all those who were lost, and in honor of all those who survived, we must continue to work toward a better, freer, and more just future for all humankind.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., 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 April 4 through April 11, 2021, as a week of observance of the Days of Remembrance of Victims of the Holocaust, and call upon the people of the United States to observe this week and pause to remember victims and survivors of the Holocaust.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of April, two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-fifth.



[FR Doc. 2021–07289
Filed 4–6–21; 11:15 am]
Billing code 3295–F1–P

Presidential Documents

Proclamation 10174 of April 2, 2021

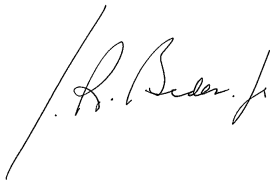
Honoring United States Capitol Police Officers

By the President of the United States of America

A Proclamation

As a sign of respect for the service and sacrifice of the victims of the attack at the United States Capitol on Friday, April 2, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, I hereby order that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, April 6, 2021. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

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



[FR Doc. 2021–07293
Filed 4–6–21; 11:15 am]
Billing code 3295–F1–P

Reader Aids

Federal Register

Vol. 86, No. 65

Wednesday, April 7, 2021

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

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FEDERAL REGISTER PAGES AND DATE, APRIL

17055–17270 1
17271–17492 2
17493–17674 5
17675–17892 6
17893–18170 7

CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
10163 17493
10164 17495
10165 17675
10166 17677
10167 17679
10168 17681
10169 17683
10170 17685
10171 17689
10172 17893
10173 18167
10174 18169

Executive Orders:
14022 17895

Administrative Orders:
Notices:
Notice of April 1, 2021 17673

5 CFR

870 17271
875 17271
890 17271
894 17271
2641 17691

7 CFR

1752 17274

12 CFR

Ch. X 17699
1003 17692
1005 17693
1010 17694
1022 17695
1024 17897
1026 ..... 17693, 17697, 17698

14 CFR

39 ..... 17275, 17278, 17280, 17283, 17285, 17287, 17290, 17497, 17499, 17502, 17504, 17510, 17512, 17515, 17518, 17521, 17700, 17703, 17706, 17708, 17710, 17899, 17902, 17905
97 ..... 17524, 17526
302 17292
399 17292

Proposed Rules:
39 ..... 17087, 17322, 17324, 17326, 17329, 17330, 17993, 17995, 17998
71 ..... 17333, 17553, 17754
73 17555

16 CFR

1231 17296

17 CFR

249 17528
274 17528

18 CFR

Proposed Rules:
101 17342

19 CFR

12 17055
361 17058

20 CFR

Proposed Rules:
655 17343
656 17343

21 CFR

1 17059
207 17061
510 17061
520 17061
522 17061
524 17061
528 17061
558 17061
821 17065

24 CFR

Proposed Rules:
5 17346

29 CFR

4908 17066

31 CFR

Proposed Rules:
1010 17557

33 CFR

165 ..... 17066, 17068

Proposed Rules:
96 17090
110 17090
117 17096
165 ..... 17565, 17755

34 CFR

Proposed Rules:
Ch. II 17757

36 CFR

230 17302
242 17713

38 CFR

Proposed Rules:
3 17098

39 CFR

Proposed Rules:
3030 17347
3050 17100

40 CFR

52 17071

62 17543
80 17073
180 ....17545, 17907, 17910, 17914, 17917

Proposed Rules:

52 ....17101, 17106, 17567, 17569, 17762
81 17762
141 17571
271 17572

44 CFR

64 17078

46 CFR

Proposed Rules:

71 17090
115 17090
176 17090

47 CFR

0 17726
1 ....17920, 18124
2 17920
25 17311
27 17920
54 ....17079, 18124
64 17726

Proposed Rules:

0 17575
1 18000
27 18000
73 ....17110, 17348

48 CFR

3001 17312
3002 17312
3003 17312
3004 17312
3005 17312
3006 17312
3007 17312
3009 17312
3010 17312
3011 17312
3012 17312
3013 17312
3015 17312
3016 17312
3017 17312
3018 17312
3019 17312
3022 17312
3023 17312
3024 17312
3025 17312
3027 17312
3028 17312
3030 17312
3031 17312
3032 17312
3033 17312
3034 17312
3035 17312
3036 17312
3037 17312
3042 17312
3046 17312
3047 17312
3052 17312
3053 17312

49 CFR

1 17292
5 17292
7 17292
106 17292
389 17292
553 17292
601 17292
1201 17548
1333 17735

50 CFR

17 17956
100 17713
217 17458
622 ....17080, 17318, 17751
648 ....17081, 17551
679 ....17320, 17752

Proposed Rules:

17 18014
648 17764

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List March 31, 2021

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