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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 34

[Docket No. PRM-34-6; NRC-2017-0022; NRC-2008-0173]

#### Industrial Radiographic Operations and Training

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notification of interpretation, request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing a notification of interpretation on industrial radiographic operations at temporary radiography jobsites and an Agreement State Compatibility Category change. The interpretation and Compatibility Category change are effective immediately with a 30-day post-promulgation comment period. The NRC is taking this action to respond to a petition for rulemaking from the Organization of Agreement States (OAS).

**DATES:** This interpretation and Compatibility Category change is effective June 1, 2021. Submit comments by July 1, 2021. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

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

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2017-0022. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: [Dawn.Forder@nrc.gov](mailto:Dawn.Forder@nrc.gov). For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **Email comments to:** [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you

do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.
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For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Gregory R. Trussell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6244, email: [Gregory.Trussell@nrc.gov](mailto:Gregory.Trussell@nrc.gov).

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#### I. Obtaining Information and Submitting Comments

##### A. Obtaining Information

Please refer to Docket IDs NRC-2017-0022 and NRC-2008-0173 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket IDs NRC-2017-0022 and NRC-2008-0173.
- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-

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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 PDR reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto: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.

#### B. Submitting Comments

Please include Docket IDs NRC-2017-0022 and NRC-2008-0173 in your comment submission. When preparing and submitting your comments, see "Tips for Submitting Effective Comments" in the "Availability of Documents" section.

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

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

#### II. Background

##### A. Industrial Radiographic Operations and Training Rulemaking

On May 28, 1997, the NRC issued § 34.41(a) of title 10 of the *Code of Federal Regulations* (10 CFR), "Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations," commonly called "the two-person rule," which requires a second qualified individual (radiographer or radiographer's assistant) to be present during industrial radiography operations at temporary jobsites. (62 FR

28948). In the preamble for the two-person rule, the NRC stated, “the purpose of the second individual is to provide immediate assistance when required and to prevent unauthorized entry into the restricted area.” (62 FR 28955). The second individual should have “. . . sufficient radiography and safety training to allow him/her to take charge and secure the radioactive material, provide aid where necessary, and prevent access to radiation areas by unauthorized persons.” (62 FR 28955). The NRC has consistently interpreted 10 CFR 34.41(a) to require the second qualified individual to directly observe radiographic operations.

*B. Integrated Materials Performance Evaluation Program Review*

The Integrated Materials Performance Evaluation Program (IMPEP) is a review process that evaluates the adequacy and compatibility of each Agreement State and NRC radioactive materials program. In June 2001, during an IMPEP review, the NRC preliminarily identified that implementation of the two-person rule by the State of Texas Department of Health (Texas) was not compatible with the provisions of 10 CFR 34.41(a).<sup>1</sup> Specifically, the NRC concluded that Texas’s regulations are not compatible with 10 CFR 34.41(a) because Texas does not require the second individual to “observe” the operations. For example, the second qualified individual is permitted to perform other job-related duties, such as developing radiographic film in a nearby darkroom, during radiographic operations. In such a case, the second person would not be deemed available to observe and provide immediate assistance in the case of an accident or injury. However, the final IMPEP report found that Texas’s performance was satisfactory based on additional performance information provided by Texas at that time. The final IMPEP report recommended that the NRC, in coordination with the Agreement States, reconsider how the rule could be implemented.

The NRC convened a working group with representatives from the OAS in June 2002.<sup>2</sup> The group provided options to an NRC Management Review Board.<sup>3</sup>

<sup>1</sup> Integrated Materials Performance Evaluation Program Review of Texas Agreement State Program August 27–31, 2001, Final Report, pp. 13–15 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML013530314) (final IMPEP report).

<sup>2</sup> STP–05–025, Results of the Management Review Board’s Consideration of the Working Group’s Report on the Re-evaluation of 10 CFR 34.41(a) Commonly Known as the “Two Person Rule.”

<sup>3</sup> Final Memo to Management Review Board, Re-evaluation of 10 CFR 34.41(a) Commonly Known as

The Management Review Board recommended that OAS or the State of Texas submit a Petition for Rulemaking (PRM) to the NRC with a request to reevaluate the two-person rule. The NRC agreed to hold in abeyance compatibility findings for inconsistencies identified during all IMPEP reviews related to the issues in the PRM until the issue is resolved.

*C. Petition for Rulemaking*

On November 3, 2005, the OAS submitted a PRM requesting the NRC to amend its regulations in 10 CFR 34.41(a), 34.43(a), and 34.51 related to industrial radiographic operations to: (1) Require that an individual receive a specific amount of radiation safety training before using sources of radiation for industrial radiography; (2) clarify the requirements related to the responsibilities of the second individual that is required to be present during radiographic operations; and (3) clarify how many individuals are required to meet visual surveillance requirements during radiographic operations. The petitioner also requested that NUREG–1556, Volume 2, “Program-Specific Guidance about Industrial Radiography Licenses,”<sup>4</sup> be revised to reflect the proposed amendments. The petitioner asserted that the NRC’s interpretation of the two-person rule added unnecessary cost to the industry because the second qualified individual is unavailable to perform other job-related duties such as developing radiographic film in a darkroom. The petitioner requested the NRC delete from the two-person rule the sentence, “[t]he additional qualified individual shall observe the operation and be capable of providing immediate assistance to prevent unauthorized entry.” The petitioner posited that in a temporary jobsite situation in which the crew consists of two qualified radiographers, and the surveillance requirement of 10 CFR 34.51 can be met, that the second individual should be considered available to provide immediate assistance even if the second qualified individual is engaged in job-related duties other than observation of radiographic operations. The petitioner also argued that one of the primary factors identified as a root cause of many industrial radiography

the Two-person Rule (June 18, 2004) (ADAMS Accession No. ML041700450).

<sup>4</sup> NUREG–1556, Volume 2, “Program-Specific Guidance About Industrial Radiography Licenses,” has been revised since the PRM was received. The August 1998 version referenced by the PRM is available at ADAMS Accession No. ML010370172. The current version, Revision 1, published in February 2016, is available at ADAMS Accession No. ML16062A091. The PRM’s request for revision continues to be relevant to the current revision.

overexposures was lack of radiation safety training.

The NRC reviewed the petition and determined that the issues and concerns raised in the petition merited further NRC consideration and inclusion in a future rulemaking (73 FR 27771). Because the rulemaking activity did not raise an immediate safety, environmental, or security concern, it was rated a medium priority. Resources were applied to this rulemaking in fiscal year 2018.

**III. Interpretation**

The NRC has previously interpreted § 34.41(a) to require both the radiographer and the second qualified individual to maintain direct observation when radiographic operations are being conducted at a temporary jobsite.<sup>5</sup> This interpretation has been demonstrated, through operating experience, to be unnecessary to protect public health and safety. The NRC is now reinterpreting that requirement.

The regulation uses the term “observe” rather than “directly observe,” and also requires that the second qualified individual “be capable of providing immediate assistance to prevent unauthorized entry.” The NRC’s interpretation has been that direct observation is required to ensure the second individual can provide immediate assistance. The two-person rule is intended to ensure that the second individual is able “. . . to take charge and secure the radioactive material, provide aid where necessary, and prevent access to radiation areas by unauthorized persons.” To achieve that purpose, the word “observe” is used to ensure that the second individual can determine when it is necessary to take charge or help the radiographer and prevent unauthorized entry.

Therefore, the NRC now interprets § 34.41 such that the requirements contained in the sentence, “[t]he additional qualified individual shall observe the operation and be capable of providing immediate assistance to prevent unauthorized entry” are met if the second qualified individual is in sufficiently close proximity to the operation and sufficiently aware of the ongoing activities to be able to provide assistance or take charge when necessary and to prevent unauthorized entry. The second individual may perform other tasks nearby so long as they are cognizant of the site-specific circumstances when radiographic operations are in progress. The second individual could, for example, use

<sup>5</sup> See NUREG–1556, Volume 2.

remote video surveillance to maintain awareness of ongoing radiographic operations from a nearby darkroom.

This interpretation does not affect the NRC's existing guidance for temporary jobsites that have multiple access points. As explained in NUREG-1556, Volume 2, Revision 1, licensees may need two or more individuals present to prevent unauthorized entry at temporary jobsites at facilities with multiple levels and multiple access points, or where members of the public are close to the radiographic operations.

#### **IV. Compatibility of Agreement State Regulations**

The NRC is not requiring Agreement States to revise their interpretations of § 34.41. As such, and as described below, the NRC hereby changes the compatibility category of § 34.41 from B to C.

Under the "Agreement State Program Policy Statement" approved by the Commission on October 2, 2017, and published in the **Federal Register** on October 18, 2017 (82 FR 48535), NRC program elements (including regulations) are placed into compatibility categories A, B, C, D, NRC, or adequacy category Health and Safety (H&S).

Compatibility Category A program elements are those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner in order to provide uniformity in the regulation of agreement material on a nationwide basis.

Compatibility Category B program elements are those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner.

Compatibility Category C program elements are those program elements that do not meet the criteria of Category A or B, but contain the essential objectives that an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a national basis. An Agreement State should adopt the essential objectives of the Category C program elements.

Compatibility Category D program elements are those program elements that do not meet any of the criteria of

Category A, B, or C and, therefore, do not need to be adopted by Agreement States for purposes of compatibility.

Compatibility Category NRC program elements are those program elements that address areas of regulation that cannot be relinquished to the Agreement States under the Atomic Energy Act of 1954, as amended, or provisions of 10 CFR. These program elements should not be adopted by the Agreement States.

Adequacy Category H&S program elements are program elements that are required because of a particular health and safety role in the regulation of agreement material within the State and should be adopted in a manner that embodies the essential objectives of the NRC program.

The NRC is changing the compatibility category designation for § 34.41(a) from B to C. Instead of requiring Agreement States to adopt this regulation in an essentially identical manner, they would now be able to implement regulations that are more restrictive than the NRC requirements, provided that the essential objective is met, and the State requirements do not jeopardize an orderly pattern of regulation of agreement material on a nationwide basis. The NRC, with the benefit of over 20 years of experience with Agreement States' implementing differing interpretations of the two-person rule, has determined that essentially identical implementation is not necessary to provide an orderly pattern of regulation. Despite differences in implementation of the two-person rule, the NRC is not aware of any cross-jurisdictional boundary issues for the National Materials Program. Therefore, § 34.41(a) is hereby redesignated Compatibility Category C.

The essential objective of § 34.41(a) is to have a second qualified individual maintain awareness of the radiographic operations, maintain direct communications with the radiographer, and be capable of providing immediate assistance to the radiographer or taking charge when necessary, and to prevent unauthorized entry into a restricted area. To meet the essential objective of Compatibility Category C, the Agreement State may either adopt the NRC's position or may continue to require direct observation of radiographic operations by the second qualified individual at temporary jobsites. Agreement States may also adopt other more restrictive requirements.

#### **V. Request for Comment**

The NRC is requesting comments on this interpretation and the change from Compatibility Category B to C for the surveillance requirements in § 34.41(a). The NRC will publish a document in the **Federal Register** containing an evaluation of the significant comments and any revisions to this interpretation made as a result of the comments and their evaluation.

#### **VI. Petition Resolution**

The NRC will evaluate comments received on this notification of interpretation to determine if the petition issues related to the two-person rule in PRM-34-6 are resolved. This notification of interpretation makes § 34.41(a) consistent with the requirement of § 34.51 that at least one of the two individuals present at a temporary jobsite "maintain direct observation of the operation."

In addition, the NRC has reviewed the petition regarding training requirements and has concluded, based on associated operational experience since 1997, that current requirements in § 34.43(c) are sufficient to ensure safe radiographic operations. Specifically, the second qualified individual is required to receive equipment training on radiographic devices, sources, associated equipment, radiation survey equipment and the daily inspection requirements on the equipment. The training requirements in 10 CFR part 34 prepare individuals conducting radiographic operations with sufficient knowledge and understanding of the regulations and safety requirements and familiarity with the equipment that they will use in the performance of their work.

Based on this review, the NRC has preliminarily concluded that rulemaking to amend its requirements for Industrial Radiographic Operations and Training is no longer necessary and, therefore, is proposing discontinuing the rulemaking activity.

The NRC intends to develop an addendum to the current version of NUREG-1556, Volume 2, Revision 1, "Program-Specific Guidance About Industrial Radiography Licenses" and to revise Inspection Procedure 87121, "Industrial Radiography Programs" to address the interpretation of the surveillance requirements.

#### **VII. 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	Date	Adams accession No. or <b>Federal Register</b> citation
Tips for Submitting Effective Comments .....	January 16, 2020 .....	ML20014E720
Petition from OAS PRM-34-6 .....	November 3, 2005 .....	ML053190112
“Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations,” commonly known as the “Two-Person Rule”.	May 28, 1997 .....	62 FR 28948
Final Memo to MRB re: Re-evaluation of 10 CFR 34.41(a), commonly known as the “Two-Person Rule,” group report to MRB.	June 18, 2004 .....	ML041700450
Organization of Agreement States, Inc., Consideration of Petition in Rulemaking Process .....	May 14, 2008 .....	73 FR 27771
NUREG-1556, Volume 2, “Program-Specific Guidance about Industrial Radiography Licenses” .....	August 1998 .....	ML010370172
NUREG-1556, Volume 2, Revision 1, “Program-Specific Guidance about Industrial Radiography Licenses”.	February 2016 .....	ML16062A091
Inspection Procedure 87121, “Industrial Radiography Programs” .....	September 5, 2014 ...	ML14239A234

## VIII. Congressional Review Act

This notification of interpretation is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

## IX. Conclusion

The requirement of § 34.41(a) is met if the additional qualified individual is in sufficiently close proximity to the operation and sufficiently aware of the ongoing activities to be able to provide assistance or take charge when necessary and to prevent unauthorized entry. In addition, the compatibility category for § 34.41(a) is changed to Category C. This notification of interpretation addresses the issues identified in PRM-34-6 regarding the two-person rule. Therefore, the NRC has preliminarily concluded that rulemaking is no longer necessary and is proposing discontinuing the rulemaking activity initiated in response to PRM-34-6.

In addition, the NRC has concluded that the training requirements for the second qualified individual in § 34.43(c) are sufficient to ensure safe radiographic operations. The NRC’s review of operational experience since 1997 shows that the NRC’s training requirements for the second qualified individual, either a radiographer’s assistant or radiographer, are adequate to protect public health and safety. Therefore, the NRC proposes denying PRM-34-6.

Dated at Rockville, Maryland, this 26th day of May 2021.

For the Nuclear Regulatory Commission.

**Wesley W. Held,**

*Acting Secretary of the Commission.*

[FR Doc. 2021-11436 Filed 5-28-21; 8:45 am]

**BILLING CODE 7590-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA-2021-0145; Project Identifier MCAI-2020-01212-R; Amendment 39-21558; AD 2021-10-25]**

#### RIN 2120-AA64

#### Airworthiness Directives; Airbus Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Airbus Helicopters Model EC130B4 and EC130T2 helicopters. This AD was prompted by a report of cracks and geometrical non-conformities of the tail rotor blades (TRBs); all cracks initiated in the drain hole area at the blade root section. This AD requires cleaning affected parts, visual and dye penetrant inspections for cracks of affected parts, a dimensional inspection to verify conformity of affected parts, and corrective actions if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective July 6, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 6, 2021.

**ADDRESSES:** For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu*; internet: [www.easa.europa.eu](http://www.easa.europa.eu). You may find this material on the EASA website at <https://ad.easa.europa.eu>. You may view this material at the FAA, Office of the

Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817-222-5110. It is also available in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0145.

#### 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-2021-0145; 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:** Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 950 L’Enfant Plaza SW, Washington, DC 20024; phone: 202-267-9167; email: *hal.jensen@faa.gov*.

#### SUPPLEMENTARY INFORMATION:

##### Background

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020-0187, dated August 21, 2020 (EASA AD 2020-0187) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus Helicopters Model EC130B4 and EC130T2 helicopters.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Helicopters Model EC130B4 and EC130T2 helicopters. The NPRM published in the **Federal Register** on March 15, 2021 (86

FR 14290). The NPRM was prompted by a report of cracks and geometrical non-conformities of the TRBs; all cracks initiated in the drain hole area at the blade root section. The NPRM proposed to require cleaning affected parts, visual and dye penetrant inspections for cracks of affected parts, a dimensional inspection to verify conformity of affected parts, and corrective actions if necessary, as specified in an EASA AD.

The FAA is issuing this AD to address geometrical non-conformities of the TRBs, which could lead to crack initiation and consequent blade failure, and possible loss of control of the helicopter. See the MCAI for additional background information.

#### Discussion of Final Airworthiness Directive

##### 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.

##### Conclusion

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

EASA AD 2020-0187 specifies procedures for cleaning affected parts, visual and dye penetrant inspections for cracks of affected parts (the cleaning and visual and dye penetrant inspections are one-time or repetitive, depending on the accumulated hours

time in service on the TRB), a one-time dimensional inspection to verify conformity of affected parts, and corrective actions if necessary. Corrective actions include replacement of the affected part with a serviceable part, and additional repetitive cleaning and inspections until replacement of the affected part with a serviceable 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.

##### Interim Action

The FAA considers this AD interim action. If final action is later identified, the FAA might consider further rulemaking then.

##### Costs of Compliance

The FAA estimates that this AD affects 264 helicopters 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
7 work-hours × \$85 per hour = \$595 .....	\$0	\$595	\$157,080

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on

the results of any required actions. The FAA has no way of determining the

number of helicopters that might need these on-condition actions:

#### ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
4 work-hours × \$85 per hour = \$340 .....	\$4,641	\$4,981

#### 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:

**2021-10-25 Airbus Helicopters:**

Amendment 39-21558; Docket No. FAA-2021-0145; Project Identifier MCAI-2020-01212-R.

**(a) Effective Date**

This airworthiness directive (AD) is effective July 6, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Airbus Helicopters Model EC130B4 and EC130T2 helicopters, certificated in any category, with a tail rotor blade (TRB), obtained by forging, part number 350A33-3002-02, 350A33-3002-03, 350A33-3002-04, or 350A33-3002-05 installed.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 6410, Tail rotor blades.

**(e) Reason**

This AD was prompted by a report of cracks and geometrical non-conformities of the TRBs; all cracks initiated in the drain hole area at the blade root section. The FAA is issuing this AD to address geometrical non-conformities of the TRBs, which could lead to crack initiation and consequent blade failure, and possible loss of control of the helicopter.

**(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 2020-0187, dated August 21, 2020 (EASA AD 2020-0187).

**(h) Exceptions to EASA AD 2020-0187**

- (1) Where EASA AD 2020-0187 refers to its effective date, this AD requires using the effective date of this AD.
- (2) The “Remarks” section of EASA AD 2020-0187 does not apply to this AD.
- (3) Although the service information referenced in EASA AD 2020-0187 specifies to discard certain parts, this AD does not include that requirement.
- (4) Although the service information referenced in EASA AD 2020-0187 specifies to return certain parts, this AD does not include that requirement.
- (5) Where EASA AD 2020-0187 refers to flight hours (FH), this AD requires using hours time-in-service.
- (6) Where the service information referenced in EASA AD 2020-0187 specifies to “contact customer support,” this AD does not include that requirement.
- (7) Where the service information referenced in EASA AD 2020-0187 specifies

to measure using the Smartphone application, the PowerPoint method, or “Contacting customer support with a specific procedure,” those methods of measurement are not required by this AD.

**(i) No Reporting Requirement**

Although the service information referenced in EASA AD 2020-0187 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(j) Special Flight Permit**

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the helicopter can be modified (if the operator elects to do so), provided that the helicopter is operated under visual flight rules.

**(k) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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 International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

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

**(l) Related Information**

For more information about this AD, contact Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 950 L’Enfant Plaza SW, Washington, DC 20024; phone: 202-267-9167; email: hal.jensen@faa.gov.

**(m) 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) European Union Aviation Safety Agency (EASA) AD 2020-0187, dated August 21, 2020.

(ii) [Reserved]

(3) For EASA AD 2020-0187, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet: [www.easa.europa.eu](http://www.easa.europa.eu). You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817-222-5110. 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-2021-0145.

(5) You may view this material 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](mailto:fedreg.legal@nara.gov), or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on May 7, 2021.

**Gaetano A. Sciortino,**

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

[FR Doc. 2021-11393 Filed 5-28-21; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA-2021-0030; Project Identifier MCAI-2020-01395-T; Amendment 39-21555; AD 2021-10-22]**

#### RIN 2120-AA64

### Airworthiness Directives; 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 Bombardier, Inc., Model BD-700-1A10 airplanes. This AD was prompted by a report indicating that during installation, a fuel pipe bracket assembly on the intermediate rib in the center fuel tank was mislocated, resulting in an offset between the fitting assembly and the refuel/defuel tube assembly. This AD requires modification of the fuel pipe bracket assembly, including all related investigative actions and corrective actions, if necessary; and performing an operational test of the refuel and defuel system. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective July 6, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 6, 2021.

**ADDRESSES:** For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-5000; fax 514-855-7401; email [thd.crj@aero.bombardier.com](mailto:thd.crj@aero.bombardier.com); internet <https://ad.easa.europa.eu>.

[www.bombardier.com](http://www.bombardier.com). You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0030.

#### 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-2021-0030; 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; fax 516-794-5531; email [9-avs-nyaco-cos@faa.gov](mailto: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-2020-37, dated October 9, 2020 (also referred to as the Mandatory Continuing Airworthiness Information, or the

MCAI), to correct an unsafe condition for certain Bombardier, Inc., Model BD-700-1A10 airplanes. You may examine the MCAI in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0030.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD-700-1A10 airplanes. The NPRM published in the **Federal Register** on February 24, 2021 (86 FR 11191). The NPRM was prompted by a report indicating that during installation, a fuel pipe bracket assembly on the intermediate rib in the center fuel tank was mislocated, resulting in an offset between the fitting assembly and the refuel/defuel tube assembly. The NPRM proposed to require modification of the fuel pipe bracket assembly, including all related investigative actions and corrective actions, if necessary; and performing an operational test of the refuel and defuel system. The FAA is issuing this AD to address the offset, which could cause a preload on the fuel pipes and reduce their ability to absorb shock or vibration-induced loads, making the tube and clamp more prone to stress corrosion cracking. This could lead to failure of the coupling and the bracket and p-clamp assembly, resulting in fuel leakage and loss of electrical bonding between fuel pipes, and lightning-induced sparking that could induce fuel ignition. 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.

#### Conclusion

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

Bombardier has issued Service Bulletin 700-28-6006, dated June 1, 2020. This service information describes procedures for a modification of the fuel pipe bracket assembly, including investigative actions (a detailed visual inspection of the fuel pipe assembly for any damaged paint, permanent deformation, corrosion, cracking, gouges, dents, or deep scratches); installation of certain new parts; replacement of the fuel pipe and fuel pipe bracket assembly, if necessary; and an operational test of the refuel and defuel system. 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 51 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
10 work-hours × \$85 per hour = \$850 .....	\$904	\$1,754	\$89,454

The FAA estimates the following costs to do any necessary on-condition action that would be required based on

the results of any required actions. The FAA has no way of determining the

number of aircraft that might need this on-condition action:

#### ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
3 work-hours × \$85 per hour = \$255 .....	\$1,937	\$2,192

According to the manufacturer, some or all of the costs of this 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

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:

**2021-10-22 Bombardier, Inc.:** Amendment 39-21555; Docket No. FAA-2021-0030; Project Identifier MCAI-2020-01395-T.

#### (a) Effective Date

This airworthiness directive (AD) is effective July 6, 2021.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to Bombardier, Inc., Model BD-700-1A10 airplanes, certificated in any category, serial numbers 9657 through 9844 inclusive.

#### (d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

#### (e) Reason

This AD was prompted by a report indicating that during installation, a fuel pipe bracket assembly on the intermediate rib in the center fuel tank was mislocated, resulting in an offset between the fitting assembly and the refuel/defuel tube assembly. The FAA is issuing this AD to address the offset, which could cause a preload on the fuel pipes and reduce their ability to absorb shock or vibration-induced loads, making the tube and clamp more prone to stress corrosion cracking. This could lead to failure of the coupling and the bracket and p-clamp assembly, resulting in fuel leakage and loss of electrical bonding between fuel pipes, and lightning-induced sparking that could induce fuel ignition.

#### (f) Compliance

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

#### (g) Inspection and Corrective Action

Within 30 months after the effective date of this AD: Perform a modification of the fuel pipe bracket assembly and refuel tube assembly; do all related investigative actions and applicable corrective actions; and perform an operational test of the refuel and defuel system; in accordance with paragraphs 2.B. and 2.C. of the Accomplishment Instructions of Bombardier Service Bulletin 700-28-6006, dated June 1, 2020. All related investigative and corrective actions must be done before further flight.

#### (h) 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 Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

#### (i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF-2020-37, dated October 9, 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-2021-0030.

(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; fax 516-794-5531; email [9-avc-nyaco-cos@faa.gov](mailto:9-avc-nyaco-cos@faa.gov).

#### (j) 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 700-28-6006, dated June 1, 2020.

(ii) [Reserved]

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-5000; fax 514-855-7401; email [thd.crj@aero.bombardier.com](mailto:thd.crj@aero.bombardier.com); internet <https://www.bombardier.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](mailto:fedreg.legal@nara.gov), or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on May 6, 2021.

**Gaetano A. Sciortino,**

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

[FR Doc. 2021-11427 Filed 5-28-21; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2021-0367; Project Identifier MCAI-2020-01398-T; Amendment 39-21562; AD 2021-10-29]

RIN 2120-AA64

**Airworthiness Directives; Airbus SAS Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A319-111, -112, -113, -114, -115, -131, -132, and -133 airplanes. This AD was prompted by a determination that the cabin swift broadband antenna doubler installation does not meet widespread fatigue damage (WFD) requirements. This AD requires a one-time special detailed inspection of certain fastener holes, replacement of the cabin swift broadband antenna doubler, and repair if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD becomes effective June 16, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 16, 2021.

The FAA must receive comments on this AD by July 16, 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 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](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://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-2021-0367.

**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-2021-0367; 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 AD, any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3223; email [sanjay.ralhan@faa.gov](mailto:sanjay.ralhan@faa.gov).

**SUPPLEMENTARY INFORMATION:****Background**

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020-0218, dated October 12, 2020 (EASA AD 2020-0218) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus SAS Model A319-111, -112, -113, -114, -115, -131, -132, and -133 airplanes.

This AD was prompted by a determination that the cabin swift broadband antenna doubler installation does not meet WFD requirements. The FAA is issuing this AD to address the potential effects of WFD on the installation. This condition, if not corrected, could reduce the structural integrity of the fuselage. See the MCAI for additional background information.

**Related Service Information Under 1 CFR Part 51**

EASA AD 2020-0218 describes procedures for accomplishing a special detailed inspection (roto test high frequency eddy current) of the affected fastener holes, repairing, if any cracks or other discrepancies (e.g. oversized hole, corrosion, or other damage) are found, and replacing the cabin swift broadband antenna doubler with a modified doubler.

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**

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 issuing this AD because the FAA evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Requirements of This AD**

This AD requires accomplishing the actions specified in EASA AD 2020-0218 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 2020-0218 is incorporated by reference in this final rule. This AD, therefore, requires compliance with EASA AD 2020-0218 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this 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 2020-0218 that is required for compliance with EASA AD 2020-0218 is available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0367.

## FAA's Justification and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for “good cause,” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

There are currently no U.S.-registered airplanes affected by this AD. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3). In addition, for the foregoing reason(s), the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

## Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA-

2021-0367; Project Identifier MCAI-2020-01398-T” at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule 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 final rule.

## Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate

the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3223; email [sanjay.ralhan@faa.gov](mailto:sanjay.ralhan@faa.gov). Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

## Regulatory Flexibility Act (RFA)

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

## Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

## ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product
239 work-hours × \$85 per hour = \$20,315 .....	Up to \$3,400 .....	Up to \$23,715.

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs 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 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, and
- (2) Will not affect intrastate aviation in Alaska.

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2021-10-29 Airbus SAS:** Amendment 39-21562; Docket No. FAA-2021-0367; Project Identifier MCAI-2020-01398-T.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective June 16, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0218, dated October 12, 2020 (EASA AD 2020–0218).

**(d) Subject**

Air Transport Association (ATA) of America Code 53, Fuselage.

**(e) Reason**

This AD was prompted by a determination that the cabin swift broadband antenna doubler installation does not meet widespread fatigue damage (WFD) requirements. The FAA is issuing this AD to address the potential effects of WFD on the installation. This condition, if not corrected, could reduce the structural integrity of the fuselage.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0218.

**(h) Exceptions to EASA AD 2020–0218**

(1) Where EASA AD 2020–0218 refers to its effective date, this AD requires using the effective date of this AD.

(2) The “Remarks” section of EASA AD 2020–0218 does not apply to this AD.

(3) Where paragraph (3) of EASA AD 2020–0218 specifies actions if “any discrepancy is detected,” for this AD a “discrepancy” is defined as any crack, oversized hole, corrosion, or other damage.

(4) Where paragraph (3) of EASA AD 2020–0218 specifies to “contact Airbus for applicable corrective actions,” if corrective actions are associated with cracking, the cracking must be repaired before further flight 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.

**(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) 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 DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC)*: Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those 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**

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email [sanjay.ralhan@faa.gov](mailto:sanjay.ralhan@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) European Union Aviation Safety Agency (EASA) AD 2020–0218, dated October 12, 2020.

(ii) [Reserved]

(3) For EASA AD 2020–0218, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>.

(4) 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–2021–0367.

(5) You may view this material 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](mailto:fedreg.legal@nara.gov), or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on May 7, 2021.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–11428 Filed 5–28–21; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

**[Docket No. FAA–2021–0126; Project Identifier MCAI–2020–00266–R; Amendment 39–21556; AD 2021–10–23]**

**RIN 2120–AA64**

**Airworthiness Directives; Airbus Helicopters Deutschland GmbH (AHD) Helicopters**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for Airbus Helicopters Deutschland GmbH (AHD) Model MBB–BK 117 D–2 helicopters. This AD was prompted by a report of a broken Titanium (Ti) bolt. This AD requires removing certain Ti-bolts from service and prohibits installing these Ti-bolts in a critical area. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective July 6, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of July 6, 2021.

**ADDRESSES:** For service information identified in this final rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at <https://www.airbus.com/helicopters/services/technical-support.html>. You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. It is also available at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0126.

**Examining the AD Docket**

You may examine the AD docket at <https://www.regulations.gov> by

searching for and locating Docket No. FAA-2021-0126; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the European Union Aviation Safety Agency (EASA) AD, any service information that is incorporated by reference, any comments received, and other information. The street 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:** Matt Fuller, AD Program Manager, General Aviation & Rotorcraft Unit, Airworthiness Products Section, Operational Safety Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email [mattthew.fuller@faa.gov](mailto:mattthew.fuller@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 Airbus Helicopters Deutschland GmbH (AHD) Model MBB-BK 117 D-2 helicopters with a Ti-bolt part number (P/N) EN3740-060022F marked with manufacturer monogram "D" or with an illegible manufacturer monogram, installed on the aft connection of the tail rotor ball bearing control. The NPRM published in the **Federal Register** on March 3, 2021 (86 FR 12294). In the NPRM, the FAA proposed to require removing any affected Ti-bolt P/N EN3740-060022F from service. The NPRM also to prohibit installing an affected Ti-bolt on the aft connection of the ball bearing control of any helicopter. The NPRM was prompted by EASA AD 2019-0258, dated October 18, 2019 (EASA AD 2019-0258), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Airbus Helicopters Deutschland GmbH (AHD), formerly Eurocopter Deutschland GmbH, Model MBB-BK117 D-2 helicopters. EASA advises of a report of a broken Ti-bolt. Subsequent investigation revealed that an improper heat treatment process was accomplished on a batch of Ti-bolts, which can lead to hydrogen embrittlement. Hydrogen embrittlement can make high-strength bolts susceptible to stress corrosion, pitting, and failure. EASA states that this condition, if not detected and corrected, could lead to failure of an affected Ti-bolt installed in

a critical location, possibly resulting in reduced control of the helicopter.

Accordingly, EASA AD 2019-0258 requires a one-time inspection for Ti-bolt P/N EN3740-060022F marked with manufacturer monogram "D" or with an illegible manufacturer monogram installed on the aft connection of the tail rotor ball bearing control (ball bearing control) and, depending on findings, contacting AHD for corrective action. EASA AD 2019-0258 also prohibits the (re)installation of these Ti-bolts.

#### Discussion of Final Airworthiness Directive

##### Comments

The FAA received no comments on the NPRM or on the determination of the costs.

##### Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data 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 helicopters.

#### Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin No. ASB MBB-BK117 D-2-00A-001, Revision 1, dated October 16, 2019, which specifies replacing each Ti-bolt P/N EN3740-060022F that is marked with manufacturer monogram "D" or if the manufacturer monogram cannot be identified with an airworthy Ti-bolt in both locations of the aft connection of ball bearing control and both high frequency (HF) antenna bracket locations.

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.

#### Differences Between This AD and the EASA AD

EASA AD 2019-0258 applies to Model MBB-BK117 D-2 helicopters and requires inspecting for Ti-bolt P/N EN3740-060022F marked with manufacturer monogram "D" or with an illegible manufacturer monogram installed on the aft connection of the ball bearing control. This AD applies to Model MBB-BK 117 D-2 helicopters with a Ti-bolt P/N EN3740-060022F marked with manufacturer monogram

"D" or with an illegible manufacturer monogram installed on the aft connection of the ball bearing control instead. EASA AD 2019-0258 requires contacting AHD for approved instructions if an affected Ti-bolt is found, whereas this AD requires removing an affected Ti-bolt from service instead.

#### Costs of Compliance

The FAA estimates that this AD affects 29 helicopters of U.S. Registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Replacing a Ti-bolt takes about 2 work-hours and parts cost about \$100 for an estimated cost of \$270 per Ti-bolt.

#### 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 helicopters 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:

**2021-10-23 Airbus Helicopters**

**Deutschland GmbH (AHD):** Amendment 39-21556; Docket No. FAA-2021-0126; Project Identifier MCAI-2020-00266-R.

**(a) Effective Date**

This airworthiness directive (AD) is effective July 6, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus Helicopters Deutschland GmbH (AHD) Model MBB-BK 117 D-2 helicopters, certificated in any category, with a Titanium (Ti) bolt part number EN3740-060022F marked with manufacturer monogram "D" or with an illegible manufacturer monogram, installed on the aft connection of the tail rotor ball bearing control.

**(d) Subject**

Joint Aircraft Service Component (JASC) Codes: 1430, Fasteners; and 6720, Tail Rotor Control System.

**(e) Unsafe Condition**

This AD was prompted by a Ti-bolt with hydrogen embrittlement. This condition could result in failure of the tail rotor ball bearing control Ti-bolt and subsequent loss of tail rotor control.

**(f) Compliance**

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

**(g) Required Actions**

(1) Within 50 hours time-in-service or 3 months, whichever occurs first, remove any Ti-bolt identified in paragraph (c) of this AD, located on the aft connection of the tail rotor ball bearing rod end (item 5) and at the input lever (item 2) as shown in Figure 1 to Airbus Helicopters Alert Service Bulletin No. ASB MBB-BK117 D-2-00A-001, Revision 1, dated October 16, 2019, from service.

(2) As of the effective date of this AD, do not install a Ti-bolt identified in paragraph

(c) of this AD on the aft connection of the tail rotor ball bearing control of any helicopter.

**(h) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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 International Validation Branch, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

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

**(i) Related Information**

(1) For more information about this AD, contact Matt Fuller, AD Program Manager, General Aviation & Rotorcraft Unit, Airworthiness Products Section, Operational Safety Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email matthew.fuller@faa.gov.

(2) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2019-0258, dated October 18, 2019. You may view the EASA AD at <https://www.regulations.gov> in Docket No. FAA-2021-0126.

**(j) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference 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) Airbus Helicopters Alert Service Bulletin No. ASB MBB-BK117 D-2-00A-001, Revision 1, dated October 16, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641-0000 or (800) 232-0323; fax (972) 641-3775; or at <https://www.airbus.com/helicopters/services/technical-support.html>.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110.

(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](mailto:fedreg.legal@nara.gov), or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on May 7, 2021.

**Gaetano A. Sciortino,**

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

[FR Doc. 2021-11392 Filed 5-28-21; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

**[Docket No. FAA-2021-0097; Project Identifier MCAI-2020-01334-T; Amendment 39-21559; AD 2021-10-26]**

**RIN 2120-AA64****Airworthiness Directives; 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 Bombardier, Inc., Model BD-100-1A10 airplanes. This AD was prompted by reports of DC motor pump (DCMP) failures during production flight tests. This AD requires installing a redesigned DCMP electric motor assembly. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective July 6, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 6, 2021.

**ADDRESSES:** For service information identified in this final rule, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1-866-538-1247 or direct-dial telephone 1-514-855-2999; email [ac.yul@aero.bombardier.com](mailto:ac.yul@aero.bombardier.com); internet <https://www.bombardier.com>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0097.

**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-2021-0097; 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:**

Steven Dzierzynski, Aerospace Engineer, Avionics and Electrical Systems Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516-228-7367; fax: 516-794-5531; email: [9-avs-nyaco-cos@faa.gov](mailto: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-2020-31, dated September 23, 2020 (TCCA AD CF-2020-31) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Bombardier, Inc., Model BD-100-1A10 airplanes. You may examine

the MCAI in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0097.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD-100-1A10 airplanes. The NPRM published in the **Federal Register** on February 24, 2021 (86 FR 11163). The NPRM was prompted by reports of DCMP failures during production flight tests. The NPRM proposed to require installing a redesigned DCMP electric motor assembly. The FAA is issuing this AD to address failures of the DCMP and electrical system generators, which could lead to the loss of normal electrical power on the airplane. 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.

**Conclusion**

The FAA reviewed the relevant data and determined that air safety and the

public interest require adopting this final rule 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**

Bombardier has issued Service Bulletin 100-29-18, Revision 03, dated December 18, 2014. This service information describes procedures for installing the redesigned DCMP electric motor assembly, having part number (P/N) 945202-3 (including a wiring modification and a structural modification). 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 239 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
68 work-hours × \$85 per hour = \$5,780 .....	\$18,964	\$24,744	\$5,913,816

**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:

**2021-10-26 Bombardier, Inc.: Amendment 39-21559; Docket No. FAA-2021-0097; Project Identifier MCAI-2020-01334-T.**

**(a) Effective Date**

This airworthiness directive (AD) is effective July 6, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Bombardier, Inc., Model BD-100-1A10 airplanes, certificated in any category, serial numbers 20003 through 20406 inclusive.

**(d) Subject**

Air Transport Association (ATA) of America Code 29, Hydraulic power.

**(e) Reason**

This AD was prompted by reports of DC motor pump (DCMP) failures during production flight tests. These failures caused the electrical system generators to disconnect due to excessive induced voltage in the bus, caused by the DCMP overheating at high altitudes. The FAA is issuing this AD to address failures of the DCMP and electrical system generators, which could lead to the loss of normal electrical power on the airplane.

**(f) Compliance**

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

**(g) Required Actions**

Within 6 months after the effective date of this AD: Install the redesigned DCMP electric motor assembly, having part number (P/N) 945202-3, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100-29-18, Revision 03, dated December 18, 2014.

**(h) Parts Installation Prohibition**

After accomplishing the installation required by paragraph (g) of this AD, no person may install a DCMP having P/N MB74F-9-7 on any airplane.

**(i) 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 Bombardier Service Bulletin 100-29-18, dated July 2, 2013; Bombardier Service Bulletin 100-29-18, Revision 01, dated January 21, 2014; or Bombardier Service Bulletin 100-29-18, Revision 02, dated July 18, 2014.

**(j) 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 Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

**(k) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF-2020-31, dated September 23, 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-2021-0097.

(2) For more information about this AD, contact Steven Dzierzynski, Aerospace Engineer, Avionics and Electrical Systems Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516-228-7367; fax: 516-794-5531; email: [9-avs-nyaco-cos@faa.gov](mailto:9-avs-nyaco-cos@faa.gov).

(3) 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 this AD specifies otherwise.

(i) Bombardier Service Bulletin 100-29-18, Revision 03, dated December 18, 2014.

(ii) [Reserved]

(3) For service information identified in this AD, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1-866-538-1247 or direct-dial telephone 1-514-855-2999; email [ac.yul@aero.bombardier.com](mailto:ac.yul@aero.bombardier.com); internet <https://www.bombardier.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](mailto:fedreg.legal@nara.gov), or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on May 7, 2021.

**Gaetano A. Sciortino,**

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

[FR Doc. 2021-11426 Filed 5-28-21; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2021-0104; Project Identifier MCAI-2020-00477-R; Amendment 39-21551; AD 2021-10-18]

**RIN 2120-AA64**

**Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Airbus Helicopters Deutschland GmbH Model MBB-BK117 D-2 helicopters.

This AD was prompted by reports that collective lever switch units having certain part numbers did not have retaining rings installed in the cable cut switch guard. This AD requires inspecting certain collective lever switch units for discrepancies (missing retaining rings, incorrectly installed retaining rings, and a missing axis in the cable cut switch guard), doing all applicable corrective actions, and marking affected parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective July 6, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 6, 2021.

**ADDRESSES:** For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADS@easa.europa.eu](mailto:ADS@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu).

You may find this material on the EASA website at <https://ad.easa.europa.eu>. You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817-222-5110. It is also available in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0104.

**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-2021-0104; 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:** Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 950 L'Enfant Plaza SW, Washington, DC 20024; telephone 202-267-9167; email [hal.jensen@faa.gov](mailto:hal.jensen@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020-0084, dated April 3, 2020 (EASA AD 2020-0084) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus Helicopters Deutschland GmbH Model MBB-BK117 D-2 helicopters. Although EASA AD 2020-0084 applies to all Model MBB-BK117 D-2 helicopters, this AD applies to helicopters with an affected part installed instead.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Model MBB-BK117 D-2 helicopters. The NPRM published in

the **Federal Register** on March 8, 2021 (86 FR 13234). The NPRM was prompted by reports that collective lever switch units having certain part numbers did not have retaining rings installed in the cable cut switch guard. The NPRM proposed to require inspecting certain collective lever switch units for discrepancies (missing retaining rings, incorrectly installed retaining rings, and a missing axis in the cable cut switch guard), doing all applicable corrective actions, and marking affected parts.

The cable cut switch guard has an axis that holds, and allows the guard to turn over, the cable cut switch. This axis is secured with two retaining rings and if both retaining rings are missing, the axis can move out. The FAA is issuing this AD to address this condition, which could cause inadvertent activation of the rescue hoist cable cut function, resulting in personal injury. See the MCAI for additional background information.

#### Discussion of Final Airworthiness Directive

##### 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.

##### Conclusion

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

editorial changes and an update to paragraph (j)(1) of this AD. 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

EASA AD 2020-0084 specifies procedures for inspecting collective lever switch units having certain part numbers for discrepancies, applicable corrective actions, and marking affected parts. Discrepancies include missing retaining rings, incorrectly installed retaining rings, and a missing axis in the cable cut switch guard. Corrective actions include installing missing retaining rings, adjusting retaining rings that are installed incorrectly, and installing an axis in the cable cut switch guard. EASA AD 2020-0084 also specifies that an affected part can be installed on any helicopter, provided it has been marked. 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.

#### Costs of Compliance

The FAA estimates that this AD affects 30 helicopters 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
0.50 work-hour × \$85 per hour = \$42.50 .....	\$0	\$42.50	\$1,275

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on

the results of any required actions. The FAA has no way of determining the

number of helicopters that might need these on-condition actions:

#### ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
2 work-hours × \$85 per hour = \$170 .....	\$56	\$226

According to the manufacturer, some or all of the costs of this 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

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:

#### 2021-10-18 Airbus Helicopters

**Deutschland GmbH:** Amendment 39-1551; Docket No. FAA-2021-0104; Project Identifier MCAI-2020-00477-R.

##### (a) Effective Date

This airworthiness directive (AD) is effective July 6, 2021.

##### (b) Affected ADs

None.

##### (c) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH Model MBB-BK117 D-2 helicopters, certificated in any category, all serial numbers, having an affected part defined in European Union Aviation Safety Agency (EASA) AD 2020-0084, dated April 3, 2020 (EASA AD 2020-0084).

##### (d) Subject

Joint Aircraft System Component (JASC) Code 2700, Flight Control System.

##### (e) Reason

This AD was prompted by reports that collective lever switch units having certain part numbers did not have retaining rings installed in the cable cut switch guard. The cable cut switch guard has an axis that holds, and allows the guard to turn over, the cable cut switch. This axis is secured with two retaining rings and if both retaining rings are missing, the axis can move out. The FAA is issuing this AD to address this condition, which could cause inadvertent activation of the rescue hoist cable cut function, resulting in personal injury.

##### (f) Compliance

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

##### (g) Requirements

Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020-0084.

##### (h) Exceptions to EASA AD 2020-0084

(1) Where EASA AD 2020-0084 refers to its effective date, this AD requires using the effective date of this AD.

(2) The “Remarks” section of EASA AD 2020-0084 does not apply to this AD.

##### (i) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the helicopter can be modified (if the operator elects to do so), provided the helicopter is not used for hoist operations.

##### (j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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 International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

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

##### (k) Related Information

For more information about this AD, contact Hal Jensen, Aerospace Engineer,

Operational Safety Branch, FAA, 950

L'Enfant Plaza SW, Washington, DC 20024; telephone 202-267-9167; email [hal.jensen@faa.gov](mailto:hal.jensen@faa.gov).

##### (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 this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2020-0084, dated April 3, 2020.

(ii) [Reserved]

(3) For EASA AD 2020-0084, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817-222-5110. 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-2021-0104.

(5) You may view this material 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](mailto:fedreg.legal@nara.gov), or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on May 5, 2021.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021-11391 Filed 5-28-21; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Parts 732 and 734

[Docket No. 210527-0116]

**RIN 0694-AF47**

### Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML); Notifying the Public of the Transfer of Jurisdiction of Certain Technology and Software as a Result of a Vacated March 6, 2020 Injunction

**AGENCY:** Bureau of Industry and Security, Department of Commerce.

**ACTION:** Notification of vacated court order.

**SUMMARY:** The Bureau of Industry and Security (BIS) is publishing this notification to the public concerning the transfer of jurisdiction of certain “software” and “technology” as a result of action by the Court of Appeals for the Ninth Circuit vacating a March 6, 2020 preliminary injunction by the district court in *Washington v. U.S. Dep’t of State*, No. 20-35391, 2021 WL 1621320, 2021 U.S. App. LEXIS 12448 (9th Cir. Apr. 27, 2021). Pursuant to that decision, issued on April 27, 2021, the mandate of the Ninth Circuit was issued on May 26, 2021 and district court’s injunction was vacated. This notice also includes guidance to persons with technology or software that was previously retained on the U.S. Munitions List (USML) and controlled under the International Traffic in Arms Regulations (ITAR) pursuant to the March 6 district court order, but which is now subject to the jurisdiction of the Export Administration Regulations (EAR).

**DATES:** The district court injunction of March 6, 2020 was vacated on May 26, 2021. As of May 26, 2021, the “technology” and “software” that meets the criteria in section 734.7(c) is “subject to the EAR” and is no longer controlled under the ITAR.

**FOR FURTHER INFORMATION CONTACT:**  
Steven Clagett, Office of Nonproliferation Controls and Treaty Compliance, Nuclear and Missile Technology Controls Division, tel. (202) 482-1641 or email [steven.clagett@bis.doc.gov](mailto:steven.clagett@bis.doc.gov).

**SUPPLEMENTARY INFORMATION:**

**Court Order of March 6, 2020**

On March 6, 2020, the U.S. District Court for the Western District of Washington issued an order preliminarily enjoining the U.S. Department of State from implementing or enforcing the final rule entitled International Traffic In Arms Regulations: U.S. Munitions List Categories I, II, and III, 85 FR 3819 (Jan. 23, 2020) “insofar as it alters the status quo restrictions on technical data and software directly related to the production of firearms or firearm parts using a 3D-printer or similar equipment.” *Washington v. U.S. Dep’t of State* (Case No. 2:20-cv-00111-RAJ).

**Court Order of March 6, 2020 Vacated by Ninth Circuit Decision Issued on April 27, 2021**

On April 27, 2021, a panel of the United States Court of Appeals for the Ninth Circuit (Case No. 20-35391) issued a decision that vacated the district court’s order enjoining the

Department of State’s Final Rule removing 3D-printed guns and their associated files from the USML; however, the preliminary injunction remained in effect until the mandate of the Ninth Circuit for this decision was issued on May 26, 2021. Until the entry of the mandate, all persons engaged in manufacturing, exporting, temporarily importing, brokering, or furnishing defense services related to ‘technical data and software directly related to the production of firearms or firearm parts using a 3D-printer or similar equipment’ were required to treat such technical data and software as listed on the USML and controlled by the ITAR.

On May 26, 2021, the mandate of the Ninth Circuit was issued, and the entirety of the Department of State’s final rule published in the **Federal Register** at 85 FR 3819 went into effect.

As a result of the vacatur of the injunction, any request for licenses of “technology” and “software” that fall under the U.S. Department of Commerce regulations, 15 CFR 732.2(b) and 734.7(c) (added by the Commerce January 23, 2020 rule, entitled Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the USML; 85 FR 4136, Jan. 23, 2020), should be directed to the U.S. Department of Commerce because this “technology” and “software” are subject to the Export Administration Regulations (EAR).

BIS strongly encourages any person with “technology” or “software” that may meet the criteria in section 734.7(c) of the EAR to review those provisions in the Commerce January 23, 2020 rule closely, as well as all other applicable EAR provisions. In anticipation of the dismissal of the case, BIS updated Frequently Asked Questions (FAQs) posted on the BIS website to add twelve FAQs to assist public understanding of section 734.7(c), including addressing application questions. These FAQs are available on the BIS website at <https://www.bis.doc.gov/index.php/documents/policy-guidance/2572-faqs-for-the-commerce-category-i-iii-firearms-rule-posted-on-bis-website-7-7-20/file>. For instance, those FAQs make clear that a BIS license is required prior to posting on the internet of “any file, including any CAD file, that can be processed by a software program into an electronic format, such as a CAM file, with no or minimal additional information or manipulation from the operator(s), and that . . . once converted will be in an executable code for the production of a firearm frame or receiver or complete firearm.”

BIS also strongly encourages any person with questions regarding section 734.7(c), which they believe are not addressed sufficiently in the FAQs on the BIS website, to contact BIS for additional guidance. See the BIS contact information under the For Further Information Contact section of this notice. In addition, if a person is unsure whether the criteria of section 734.7(c) are met, including whether the “technology” or “software” is ready for insertion into a computer numerically controlled machine tool, additive manufacturing equipment, or any other equipment, persons with such “technology” or “software” can submit an official classification request to BIS using the free online submission system, called SNAP-R, available on the BIS website, to receive an official classification of the “technology” or “software.” For additional information on SNAP-R, see <https://www.bis.doc.gov/index.php/licensing/simplified-network-application-process-redesign-snap-r/getting-started-with-snap-r>. The person submitting the official classification should note in the classification request that the classification is being submitted to determine whether the “technology” or “software” meets the criteria in section 734.7(c).

**Matthew S. Borman,**  
Deputy Assistant Secretary for Export Administration.

[FR Doc. 2021-11585 Filed 5-27-21; 4:15 pm]  
**BILLING CODE 3510-33-P**

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Part 744**

**[Docket No. 210514-0106]**

**RIN 0694-AI49**

**Addition of Entities, Revision of Entries, and Removal of Entity From the Entity List; and Revision of Entry and Removal of Entity From the Military End-User List (MEU)**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by adding eight entities to the Entity List. These eight entities have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These

entities will be listed on the Entity List under the destinations of Pakistan and the United Arab Emirates (UAE). This rule also revises two existing entries and corrects one existing entry on the Entity List under the destination of China and removes one entity from and revises one existing entry on the Military End-User (MEU) List under the destination of China. Lastly, this rule removes one entity under the destination of Pakistan. The removals from the Entity List and MEU List are made in connection with requests for removal that BIS received pursuant to the EAR and a review of information provided in those requests.

**DATES:** This rule is effective June 1, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-5991, Fax: (202) 482-3911, Email: *ERC@bis.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Entity List (supplement no. 4 to part 744 of the EAR) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States. The EAR (15 CFR parts 730-774) impose additional license requirements on, and limit the availability of most license exceptions for, exports, reexports, and transfers (in-country) to listed entities. The license review policy for each listed entity is identified in the "License Review Policy" column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document adding entities to the Entity List. BIS places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The MEU List (supplement no. 7 to part 744 of the EAR) identifies entities that have been determined by the End-User Review Committee (ERC) to be 'military end users' pursuant to § 744.21 of the EAR. That section imposes additional license requirements on, and limits the availability of most license exceptions for, exports, reexports, and transfers (in-country) to listed entities on the MEU List, as specified in supplement no. 7 to part 744 and § 744.21 of the EAR. Entities are listed

on the MEU List under the destinations of Burma, China, Russia, or Venezuela. The license review policy for each listed entity is identified in the introductory text of supplement no. 7 to part 744 and in § 744.21(b) and (e) of the EAR. The MEU List includes introductory text, which specifies the scope of the license requirements, limitations on the use of EAR license exceptions, and the license review policy that applies to each listed entity. These requirements are also reflected in § 744.21 but, for ease of reference, these requirements are also included in the introductory text of the supplement.

The ERC, composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List and the MEU List. The ERC makes all decisions to add an entry to the Entity List and MEU List by majority vote and all decisions to remove or modify an entry by unanimous vote.

**Entity List Decisions**

*A. Additions to the Entity List*

Under § 744.11(b) (Criteria for revising the Entity List) of the EAR, entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States, and those acting on behalf of such entities, may be added to the Entity List. Paragraphs (b)(1) through (5) of § 744.11 provide an illustrative list of activities that could be considered contrary to the national security or foreign policy interests of the United States.

This rule implements the decision of the ERC to add eight entities to the Entity List. These eight entities will be listed on the Entity List under the destinations of Pakistan and the UAE. The ERC made the decision to add these eight entities described below under the standard set forth in § 744.11(b) of the EAR.

The ERC determined that the eight subject entities are engaging in or enabling activities contrary to U.S. national security and foreign policy interests, as follows:

The ECR determined that eight entities are involved in proliferation to unsafeguarded nuclear activities that are contrary to the national security and/or foreign policy of the United States. Six of these entities are located in Pakistan:

Hassan Scientific Corporation; Mecatech (Private) Limited; Middle East Automation & Controls Services; Mirza and Co.; Techno-Commercial; and TELEC Electronics & Machinery (Pvt) Ltd. Two of these entities are located in UAE: Delta Engineering Concern FZE; and Future Trends International, FZE LLC.

Pursuant to § 744.11(b) of the EAR, the ERC determined that the conduct of the above-described eight entities raises sufficient concerns that prior review, via the imposition of a license requirement for exports, reexports, or transfers (in-country) of all items subject to the EAR involving these eight entities and the possible issuance of license denials or the possible imposition of license conditions on shipments to this entity, will enhance BIS's ability to prevent violations of the EAR or otherwise protect U.S. national security or foreign policy interests.

For the eight entities added to the Entity List in this final rule described under this section, Section A, *Additions to the Entity List*, BIS imposes a license requirement that applies to all items subject to the EAR. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the person being added to the Entity List in this rule. BIS imposes a license review policy of a presumption of denial for these eight entities.

For the reasons described above, this final rule adds the following eight entities to the Entity List:

**Pakistan**

- Hassan Scientific Corporation;
- Mecatech (Private) Limited;
- Middle East Automation & Controls Services;
- Mirza and Co;
- Techno-Commercial; and
- TELEC Electronics & Machinery (Pvt) Ltd.

**UAE**

- Delta Engineering Concern FZE; and
- Future Trends International, FZE LLC.

*B. Revisions to the Entity List*

This final rule revises two existing entries, two under the destination China, as follows.

This rule implements a revision to one existing entry for "DJI," first added to the Entity List under the destination of China on December 22, 2020 (85 FR 83420, December 22, 2020). The ERC determined to modify the existing entry under China for DJI by revising the License Requirement column to exclude EAR99-designated technology for the

operation, maintenance, or repair of unmanned aerial vehicles (UAV) released to DJI by the operator of the UAV.

This rule implements a revision to one existing entry for “Seajet Company Limited,” first added to the Entity List under the destination of China on September 4, 2018 (83 FR 44824, September 4, 2018). BIS is revising the existing entry under China by adding three aliases and five addresses. The ERC determined to modify the existing entry for Seajet Company Limited under China by adding alternate business names as aliases and addresses.

#### C. Correction to the Entity List

This final rule implements a correction to one existing entry on the Entity List, one under China. The correction is under the destination of China for the entity China State Shipbuilding Corporation, Limited (CSSC) 750th Research Institute. This entity was added to the EAR on December 18, 2020 (85 FR 83416, December 22, 2020) (the “December 22 Final Rule”). While the amendatory instruction and the Background section of the December 22 Final Rule adding the entity used the correct name China State Shipbuilding Corporation, Limited (CSSC) 750th Test Center, the regulatory text of the December 22 Final Rule used the incorrect title China State Shipbuilding Corporation, Limited (CSSC) 750th Research Institute. While BIS had updated the preamble and the amendatory instruction of December 22 Final Rule to use Test Center instead of Research Center in the entity name, it inadvertently missed updating the correction in the regulatory text. Because the December 22 Final Rule used a slightly different name in the amendatory instruction compared to the regulatory text, the change was not incorporated as intended in the regulations. This final rule corrects the entity’s name to accurately state China State Shipbuilding Corporation, Limited (CSSC) 750th Test Center. This correction is made by adding the entry again with the corrected entity name.

#### D. Removals From the Entity List

This rule implements a decision of the ERC to remove IKAN Engineering Services, one entity located in Pakistan, from the Entity List on the basis of a removal request. The entry for IKAN Engineering Services was added to the Entity List on September 18, 2014 (79 FR 56003, September 18, 2014). The ERC decided to remove this one entity based on information BIS received pursuant to § 744.16 of the EAR and the review the ERC conducted in

accordance with procedures described in supplement no. 5 to part 744.

This final rule implements the decision to remove the following one entity, located in Pakistan, from the Entity List:

#### Pakistan

- IKAN Engineering Services.

#### ERC MEU List Decisions

##### Removals From the MEU List

This rule removes Molecular Devices Shanghai Corporation, an entity located in China, from the MEU List. The entry for Molecular Devices Shanghai Corporation was added to the MEU List on December 23, 2020 (85 FR 83799, December 23, 2020). The ERC determined to remove the entry for Molecular Devices Shanghai Corporation from the MEU List on the basis of a request for removal submitted to BIS pursuant to § 744.21(b)(2) of the EAR.

This final rule removes the following one entity, located in China, from the MEU List:

#### China

- Molecular Devices Shanghai Corporation.

##### Revisions to the MEU List

This final rule revises one existing entry, under the destination China, as follows. This rule implements a revision to one existing entry for Hutchison Optel Telecom Technology Co., Ltd., first added to the MEU List under the destination of China on December 23, 2020 (85 FR 83799, December 23, 2020). BIS is revising the existing entry under China by removing “Hutchinson” at the beginning of the entity’s name and adding “Chongqing” in its place. The entity’s name will read as Chongqing Optel Telecom Technology Co., Ltd. The ERC determined to modify the entry for Hutchison Optel Telecom Technology Co., Ltd. to change the name and address for this entry on the basis of a request for modification submitted to BIS pursuant to § 744.21(b)(1)(i) of the EAR. Because this modification changes the first name of the entity, the amendatory instructions below remove the existing entity with the current name and changes the entity name to the amended name. This final rule retains the original **Federal Register** citation and also includes the **Federal Register** citation from this final rule, so that the public is aware of when this existing entity was originally added and when it was modified on the MEU List.

#### Savings Clause

Shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on June 1, 2021, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR).

#### Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule.

#### Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications, and carries a burden estimate of 29.6 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not

expected to increase as a result of this rule.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of ECRA (see 50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

#### List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

#### PART 744—[AMENDED]

- 1. The authority citation for 15 CFR part 744 continues to read as follows:

**Authority:** 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 18, 2020, 85 FR 59641 (September 22, 2020); Notice of November 12, 2020, 85 FR 72897 (November 13, 2020).

- 2. Supplement No. 4 to part 744 is amended:

- a. Under CHINA, PEOPLE'S REPUBLIC OF:

- i. By adding in alphabetical order an entry for “China State Shipbuilding

Corporation, Limited (CSSC) 750th Test Center”; and

- ii. By revising the entries for “DJI” and “Seajet Company Limited”;
- b. Under PAKISTAN:
- i. By adding in alphabetical order an entry for “Hassan Scientific Corporation”;
- ii. By removing the entry for “IKAN Engineering Services”; and
- iii. By adding in alphabetical order entries for “Mecatech (Private) Limited,” “Middle East Automation & Controls Services,” “Mirza and Co.,” “Techno-Commercial,” and “TELEC Electronics & Machinery (Pvt) Ltd.”; and
- c. Under the UNITED ARAB EMIRATES, by adding in alphabetical order entries for “Delta Engineering Concern FZE” and “Future Trends International, FZE LLC”.

The additions and revisions read as follows:

#### Supplement No. 4 to Part 744—Entity List

\* \* \* \* \*

Country	Entity	License requirement	License review policy	Federal Register et al. citation
CHINA, PEOPLE'S REPUBLIC OF	China State Shipbuilding Corporation, Limited (CSSC) 750th Test Center, a.k.a., the following two aliases: —China Shipbuilding Industry Group Co., Ltd. (CSIC) 750th Test Center; and —Kunming Marine Equipment Research and Test Center. No. 3, Renmin East Road, Panlong District, Kunming, Yunnan Province, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial .....	85 FR 83420, 12/22/20. 86 FR [INSERT FR PAGE NUMBER] 6/1/2021.
	DJI, a.k.a., the following four aliases: —Shenzhen DJI Innovation Technology Co., Ltd.; —SZ DJI Technology Co., Ltd.; —Shenzhen DJI Sciences and Technologies Ltd.; and —Da-Jiang Innovations. 14 Floor, West Wing, Skyworth Semiconductor Design Building, No.18 Gaoxin South 4th Ave., Nanshan District, Shenzhen, China, 518057.	All items subject to the EAR. (See § 744.11 of the EAR), except for EAR99-designated technology for the operation, maintenance, or repair of unmanned aerial vehicles (UAV) released to this entity by the operator of the UAV.	Case-by-case review for items necessary to detect, identify and treat infectious disease; Presumption of denial for all other items subject to the EAR.	85 FR 83420, 12/22/20. 86 FR [INSERT FR PAGE NUMBER] 6/1/2021.
	Seajet Company Limited, a.k.a., the following three aliases: —Hisiang Logistics Company Limited; —Beijing Haixiang International Transport Agency Co., Ltd.; and —GDL Company Limited	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial. ....	83 FR 44824, 9/4/18. 86 FR [INSERT FR PAGE NUMBER] 6/1/2021.

Country	Entity	License requirement	License review policy	Federal Register et al. citation
	B-804 SOHO New Town, 88 Jianguo Road, Chaoyang District, Beijing, 100022, China; and Room 1002, LT Square, No. 500, Chengdu North Road, Shanghai, 200003, China; and Unit 1906-2, West Tower, Fortune Plaza, No. 114, Tiyu Dong Rd, Tianhe District, Guangzhou 510620, China; and No. 2, Juhe 6 Street, Jufuyuan, Business Development Tongzhou Di, Beijing, China; and Room 2, A316 Haidin 9 Road, Tianjin, Port Free Trade Zone, Tianjin, China; and 2-403 No.2 Jinsui Lu, Nanfaxin, Shunyi District, Beijing, China; and Room 2201-23, Building (1-5), No. 600 Hengfeng Road, Jing'an District, Shanghai, China, and 404 (8), Zongbao Zone Building, No. 1998, Innovation Avenue, Dongxihu District, Wuhan, China; and Zibian A25 3rd Floor, No. 98 Jianji Road, Haizhu District, Guangzhou, China; and B-807 SOHO New Town, 88 Jianguo Road, Chaoyang District, 100022 Beijing, China.	*	*	*
	*	*	*	*
PAKISTAN .....	Hassan Scientific Corporation, a.k.a., the following one alias: —Hasan Scientific Corporation. 50 Akbari Road, New Anarkali, Lahore, Pakistan.	All Items Subject to the EAR.	See § 744.2(d) of the EAR	86 FR [INSERT FR PAGE NUMBER] 6/1/2021.
	*	*	*	*
	Mecatech (Private) Limited, a.k.a., the following one alias: —Mecatech. 402, 4th Floor, Chena Centre, Plot #104-E, Jinnah Avenue, Blue Area, Islamabad, Pakistan.	All Items Subject to the EAR.	See § 744.2(d) of the EAR	86 FR [INSERT FR PAGE NUMBER] 6/1/2021.
	*	*	*	*
	Middle East Automation & Controls Services, a.k.a., the following one alias: —MACS; and —MEACS. 274-A, Canal View Housing Society, Lahore, Pakistan.	All Items Subject to the EAR.	See § 744.2(d) of the EAR	86 FR [INSERT FR PAGE NUMBER] 6/1/2021.
	*	*	*	*
	Mirza and Co., a.k.a., the following one alias: —Mirza. Office #343 3rd floor, Landmark Plaza 5/6 Jail Road, Lahore, Pakistan.	All Items Subject to the EAR.	See § 744.2(d) of the EAR	86 FR [INSERT FR PAGE NUMBER] 6/1/2021.
	*	*	*	*
	Techno-Commercial, a.k.a., the following two aliases: —TCL; and —Techserve. 8-22-24 Farid Plaza, 65 Shadman, Lahore, Pakistan.	All Items Subject to the EAR.	See § 744.2(d) of the EAR	86 FR [INSERT FR PAGE NUMBER] 6/1/2021.
	*	*	*	*
	TELEC Electronics & Machinery (Pvt) Ltd., a.k.a., the following one alias: —TELEC. 415 Mehboob Chambers, Abdullah Haroon Road, Saddar, Karachi, 74400; and No. 1363, Cornice Road, Phase 3, Bahria Town, Islamabad, Pakistan.	All Items Subject to the EAR.	See § 744.2(d) of the EAR	86 FR [INSERT FR PAGE NUMBER] 6/1/2021.

Country	Entity	License requirement	License review policy	Federal Register et al. citation
*	*	*	*	*
*	*	*	*	*
UNITED ARAB EMIRATES	*	*	*	*
	Delta Engineering Concern FZE, a.k.a. the following one alias: —DEC. SAIF Office, Q I –06–0 92/A, Sharjah, U.A.E.	All Items Subject to the EAR.	See § 744.2(d) of the EAR	86 FR [INSERT FR PAGE NUMBER] 6/1/2021.
	Future Trends International, FZE LLC, a.k.a., the following one alias: —Future Trends. B-1101-15 Grand Tower Ajman, U.A.E.	All Items Subject to the EAR.	See § 744.2(d) of the EAR	86 FR [INSERT FR PAGE NUMBER] 6/1/2021.
*	*	*	*	*
*	*	*	*	*

\* \* \* \* \*

■ 3. Supplement No. 7 to part 744 is amended under CHINA, PEOPLE'S REPUBLIC OF:

- a. By adding in alphabetical order the entry for “Chongqing Optel Telecom Technology Co., Ltd.”; and
- b. By removing the entries for “Hutchison Optel Telecom Technology Co., Ltd.” and “Molecular Devices Shanghai Corporation”.

The addition reads as follows:

**Supplement No. 7 to Part 744—  
'Military End-User' (MEU) List**

\* \* \* \* \*

Country	Entity	Federal Register citation
*	*	*
CHINA, PEO- PLE'S REPUB- LIC OF.	*	*
	Chongqing Optel Telecom Technology Co., Ltd., No. 1, 6/F, Building 7, No. 106 West Section, Jinkai Avenue, Yubei District, Chongqing, China.	85 FR 83799 12/23/2020. 86 FR [INSERT FR PAGE NUMBER] 6/1/2021.
*	*	*
*	*	*

**Matthew S. Borman,**  
Deputy Assistant Secretary for Export Administration.

[FR Doc. 2021-11304 Filed 5-28-21; 8:45 am]  
BILLING CODE 3510-33-P

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Part 242**

[Release No. 34-90610A, File No. S7-03-20]

RIN 3235-AM61

**Market Data Infrastructure**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document makes technical corrections to amendments to modernize the national market system for the collection, consolidation, and dissemination of information with respect to quotations for and transactions in national market system stocks adopted in Release No. 34-90610 (December 9, 2020) (“Adopting Release”), which was published in the **Federal Register** on April 9, 2021.

**DATES:** Effective June 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Kelly Riley, Senior Special Counsel, at (202) 551-6772; Ted Uliassi, Senior Special Counsel, at (202) 551-6095, Division of Trading and Markets,

Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** We are making technical amendments to correct § 242.600(b)(5). Specifically, this document amends Instruction 8 published in the Adopting Release by adding new Instruction 8.w. to revise a cross-reference to current § 242.600(b)(4) in current § 242.600(b)(5).

In document FR doc. 2020-28370, which was published in the **Federal Register** on Friday, April 9, 2021, at 86 FR 18596, the following correction is made:

**§ 242.600 [Corrected]**

■ On page 18810, in the first column, Instruction 8.w. is added to read as follows: “w. Amending newly redesignated paragraph (b)(7)(i) by removing the text “paragraph (b)(4) of this section” and adding in its place “paragraph (b)(6) of this section.””

Dated: May 24, 2021.

**Vanessa A. Countryman,**  
Secretary.

[FR Doc. 2021-11282 Filed 5-28-21; 8:45 am]

**BILLING CODE 8011-01-P**

**DEPARTMENT OF STATE****22 CFR Parts 121, 123, 124, 126, and 129**

**[Public Notice: 11434]**

**International Traffic in Arms  
Regulations: U.S. Munitions List  
Categories; Preliminary Injunction  
Vacated by a Federal Court of Appeals**

**AGENCY:** Department of State.

**ACTION:** Notification of vacatur of a prior preliminary injunction.

**SUMMARY:** The U.S. Department of State (the Department) is issuing this document to inform the public of the vacatur of a preliminary injunction previously ordered by a federal district court on March 6, 2020. As a result of the vacatur, the Department's previously issued final rule of January 23, 2020, goes into full effect. Therefore, software and technical data related to 3-D printing of firearms or components transferred to the Export Administration Regulations (EAR), administered by the Department of Commerce now is exclusively controlled by the EAR.

**DATES:** The court order vacating the preliminary injunction took effect May 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** For technical questions only: Sarah Heidema, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663-2809; email [DDTCPublicComments@state.gov](mailto:DDTCPublicComments@state.gov).

**SUPPLEMENTARY INFORMATION:** On January 23, 2020, the Department published a final rule in the **Federal Register** at 85 FR 3819 (RIN 1400-AE30) that amended the International Traffic in Arms Regulations (ITAR) to revise Categories I, II, and III of the U.S. Munitions List (USML) and remove certain items that no longer warrant control. On the same date, the Department of Commerce published a companion final rule in the **Federal Register** at 85 FR 4136 (RIN 0694-AF47)

that made conforming changes to the Export Administration Regulations (EAR) to control the export of certain commodities, software, and technology removed from the USML. These final rules were set to be effective March 9, 2020.

On March 6, 2020, in response to a lawsuit filed by several U.S. States, the U.S. District Court for the Western District of Washington (Civil Action No. 2:20-cv-00111), issued an order preliminarily enjoining part of the Department's final rule. More specifically, the order enjoined the Department “from implementing or enforcing the regulation entitled International Traffic in Arms Regulation: U.S. Munitions List Categories I, II, and III, 85 FR 3819 (Jan. 23, 2020) insofar as it alters the status quo restrictions on technical data and software directly related to the production of firearm and firearm parts using a 3D-printer or similar equipment.” As the text of the order explained, and as was similarly described in a document published on April 2, 2020 at 85 FR 18445, the court's order required the Department to maintain certain technical data controls in the USML related to producing 3-D printed firearms or firearm parts; however, other parts of the subject final rule were allowed to go into effect, including the removal of certain tangible firearms from the USML, which the Department of Commerce then began to regulate for export under its EAR.

However, on May 26, 2021, the U.S. Court of Appeals for the Ninth Circuit issued its mandate in *Washington v. U.S. Dep't of State*, No. 20-35391, 2021 WL 1621320, 2021 U.S. App. LEXIS 12448 (9th Cir. Apr. 27, 2021), vacating the preliminary injunction previously entered by the U.S. District Court for the Western District of Washington on March 6, 2020.

As a result, the remainder of the Department's subject final rule at 85 FR 3819 has now gone into effect. The Department therefore no longer regulates the export of certain kinds of technical data as described in its previous **Federal Register** document of April 2, 2020 at 85 FR 18445. Now, the EAR, administered by the Department of Commerce, exclusively controls the export of all commodities, software, and technology described in its final rule at 85 FR 4136 on January 23, 2020. For questions about that rule, please contact the Department of Commerce's Bureau

of Industry and Security or visit its website at <https://www.bis.doc.gov/>.

**Michael F. Miller,**

*Deputy Assistant Secretary of State for Defense Trade Controls, Department of State.*

[FR Doc. 2021-11536 Filed 5-27-21; 4:15 pm]

**BILLING CODE 4710-08-P**

**FEDERAL MEDIATION AND CONCILIATION SERVICE****29 CFR Part 1473****Recession of Federal Mediation and Conciliation Rule on Administrative Guidance**

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Final rule; rescission of regulations.

**SUMMARY:** On April 20, 2020, the Federal Mediation and Conciliation Service (FMCS) published a final rule on administrative guidance implementing an Executive order entitled “Promoting the Rule of Law Through Improved Agency Guidance Documents,” and providing policy and requirements for issuing, modifying, withdrawing, and using guidance; and taking and responding to petitions about guidance. In accordance with the “Executive Order on Revocation of Certain Executive Orders Concerning Federal Regulation,” issued by President Biden on January 20, 2021, this final rule rescinds FMCS's rule on guidance.

**DATES:** This final rule is effective June 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Alisa Silverman, Attorney-Advisor, Office of General Counsel, Federal Mediation and Conciliation Service, 250 E St. SW, Washington, DC 20427; Office/Fax/Mobile 202-606-5488; [asilverman@fmcs.gov](mailto:asilverman@fmcs.gov).

**SUPPLEMENTARY INFORMATION:****I. Discussion**

On April 20, 2020, at 85 FR 21770, the Federal Mediation and Conciliation Service (FMCS) published a final rule on administrative guidance implementing E.O. 13891, “Promoting the Rule of Law Through Improved Agency Guidance Documents,” signed by President Trump on October 9, 2019. As required by the E.O., this rule contained policy and requirements for issuing, modifying, withdrawing, and using guidance; making guidance available to the public; a notice and comment process for significant

guidance; and taking a responding to petitions about guidance.

On January 20, 2021, President Biden issued the “Executive Order on Revocation of Certain Executive Orders Concerning Federal Regulation” which, among other things, revoked E.O. 13891 and directed agencies to promptly take steps to rescind any orders, rules, regulations, guidelines, or policies, or portions thereof, implementing or enforcing the Executive Orders. In accordance with E.O. 13992, FMCS is issuing this final rule, which rescinds the rule on procedures for FMCS guidance documents published April 20, 2020.

## II. Final Rule

FMCS has determined that this rule is suitable for final rulemaking. The revisions to FMCS’ policies and requirements surrounding administrative guidance are purely internal matters of agency management, as well as the agency’s organization, procedure, and practice. Accordingly, as with the April 20, 2020, final rule, FMCS is not required to engage in a notice and comment process to issue this rule under the Administrative Procedures Act, See U.S.C. 553(a)(2), 553(b)(A). Furthermore, because this rule is procedural rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule not be effective until at least 30 days after publication in the **Federal Register** is inapplicable. FMCS also finds good cause to provide an immediate effective date for this rule because it imposes no obligations on parties outside the federal government and therefore no advance notice is required to enable employers or other private parties to come into compliance.

### List of Subjects in 29 CFR Part 1473

Administrative practice and procedure, Guidance documents.

### PART 1473—[REMOVED]

- For the reasons discussed in the preamble, and under the authority 29 U.S.C. 172 of Taft Harley Act of 1947 and E.O. 13992, FMCS amends 29 CFR chapter XII by removing part 1473.

Issued in Washington, DC

**Sarah Cudahy,**

General Counsel.

[FR Doc. 2021-11204 Filed 5-28-21; 8:45 am]

BILLING CODE P

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### 31 CFR Part 525

##### Burma Sanctions Regulations

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury’s Office of Foreign Assets Control (OFAC) is adding regulations to implement a February 10, 2021 Burma-related Executive order. OFAC intends to supplement these regulations with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, general licenses, and other regulatory provisions. The appendix to the Regulations will be removed when OFAC supplements this part with a more comprehensive set of regulations.

**DATES:** This rule is effective June 1, 2021.

##### FOR FURTHER INFORMATION CONTACT:

OFAC: Assistant Director for Licensing, 202-622-2480; Assistant Director for Regulatory Affairs, 202-622-4855; or Assistant Director for Sanctions Compliance & Evaluation, 202-622-2490.

##### SUPPLEMENTARY INFORMATION:

###### Electronic Availability

This document and additional information concerning OFAC are available on OFAC’s website: [www.treasury.gov/ofac](http://www.treasury.gov/ofac).

###### Background

On February 10, 2021, the President, invoking the authority of, *inter alia*, the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) (IEEPA), issued Executive Order (E.O.) 14014 of February 10, 2021, “Blocking Property With Respect to the Situation in Burma” (86 FR 9429, February 12, 2021).

In E.O. 14014, the President determined that the situation in and in relation to Burma, and in particular the February 1, 2021 coup, in which the military overthrew the democratically elected civilian government of Burma and unjustly arrested and detained government leaders, politicians, human rights defenders, journalists, and religious leaders, thereby rejecting the will of the people of Burma as expressed in elections held in November 2020 and undermining the country’s democratic transition and rule of law, constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States and declared a national emergency to deal with that threat.

OFAC is issuing the Burma Sanctions Regulations, 31 CFR part 525 (the “Regulations”), to implement E.O. 14014, pursuant to authorities delegated to the Secretary of the Treasury in E.O. 14014. A copy of E.O. 14014 appears in appendix A to this part.

The Regulations are being published in abbreviated form at this time for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part 525 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, general licenses, and other regulatory provisions. The appendix to the Regulations will be removed when OFAC supplements this part with a more comprehensive set of regulations.

##### Public Participation

Because the Regulations involve a foreign affairs function, the provisions of E.O. 12866 of September 30, 1993, “Regulatory Planning and Review” (58 FR 51735, October 4, 1993), and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601-612) does not apply.

##### Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the “Reporting, Procedures and Penalties Regulations”). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505-0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

### List of Subjects in 31 CFR Part 525

Administrative practice and procedure, Banks, banking, Blocking of assets, Burma, Foreign trade, Penalties, Reporting and recordkeeping requirements, Sanctions, Services.

- For the reasons set forth in the preamble, OFAC adds part 525 to 31 CFR chapter V to read as follows:

## PART 525—BURMA SANCTIONS REGULATIONS

### Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

525.101 Relation of this part to other laws and regulations.

**Subpart B—Prohibitions**

525.201 Prohibited transactions.  
 525.202 Effect of transfers violating the provisions of this part.  
 525.203 Holding of funds in interest-bearing accounts; investment and reinvestment.  
 525.204 Expenses of maintaining blocked tangible property; liquidation of blocked property.  
 525.205 Exempt transactions.

**Subpart C—General Definitions**

525.300 Applicability of definitions.  
 525.301 Blocked account; blocked property.  
 525.302 Effective date.  
 525.303 Entity.  
 525.304 Financial, material, or technological support.  
 525.305 [Reserved]  
 525.306 Interest.  
 525.307 Licenses; general and specific.  
 525.308 OFAC.  
 525.309 Person.  
 525.310 Property; property interest.  
 525.311 Transfer.  
 525.312 United States.  
 525.313 United States person; U.S. person.  
 525.314 U.S. financial institution.

**Subpart D—Interpretations**

525.401 [Reserved]  
 525.402 Effect of amendment.  
 525.403 Termination and acquisition of an interest in blocked property.  
 525.404 Transactions ordinarily incident to a licensed transaction.  
 525.405 Setoffs prohibited.  
 525.406 Entities owned by one or more persons whose property and interests in property are blocked.

**Subpart E—Licenses, Authorizations, and Statements of Licensing Policy**

525.501 General and specific licensing procedures.  
 525.502 [Reserved]  
 525.503 Exclusion from licenses.  
 525.504 Payments and transfers to blocked accounts in U.S. financial institutions.  
 525.505 Entries in certain accounts for normal service charges.  
 525.506 Provision of certain legal services.  
 525.507 Payments for legal services from funds originating outside the United States.  
 525.508 Emergency medical services.  
 525.509 Official business of the United States Government.

**Subpart F—Reports**

525.601 Records and reports.

**Subpart G—Penalties and Findings of Violation**

525.701 Penalties and Findings of Violation.

**Subpart H—Procedures**

525.801 Procedures.  
 525.802 Delegation of certain authorities of the Secretary of the Treasury.

**Subpart I—Paperwork Reduction Act**

525.901 Paperwork Reduction Act notice. Appendix A to Part 525—Executive Order 14014 of February 10, 2021

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 14014, 86 FR 9429, February 12, 2021.

**Subpart A—Relation of This Part to Other Laws and Regulations****§ 525.101 Relation of this part to other laws and regulations.**

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

**Note 1 to § 525.101.** This part has been published in abbreviated form for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, general licenses, and other regulatory provisions.

**Subpart B—Prohibitions****§ 525.201 Prohibited transactions.**

All transactions prohibited pursuant to Executive Order (E.O.) 14014 of February 10, 2021, or any further Executive orders issued pursuant to the national emergency declared in E.O. 14014, are prohibited pursuant to this part.

**Note 1 to § 525.201.** The names of persons designated or identified as blocked pursuant to E.O. 14014, or listed in, or designated or identified as blocked pursuant to, any further Executive orders issued pursuant to the national emergency declared therein, whose property and interests in property therefore are blocked pursuant to this section, are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) using the following identifier formulation: “[BURMA–EO[EO number

pursuant to which the person's property and interests in property are blocked]].” The SDN List is accessible through the following page on OFAC's website: [www.treasury.gov/sdn](http://www.treasury.gov/sdn). Additional information pertaining to the SDN List can be found in appendix A to this chapter. See § 525.406 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to this section.

**Note 2 to § 525.201.** The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this section also are published in the **Federal Register** and incorporated into the SDN List using the following identifier formulation: “[BP1–BURMA–EO[EO number pursuant to which the person's property and interests in property are blocked pending investigation]].”

**Note 3 to § 525.201.** Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this section.

**§ 525.202 Effect of transfers violating the provisions of this part.**

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 525.201, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or interest in property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 525.201, unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, a license or other authorization issued by OFAC before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of this part and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of OFAC each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with OFAC a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by OFAC; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

(e) The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(f) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property or interest in property blocked pursuant to § 525.201.

#### **§ 525.203 Holding of funds in interest-bearing accounts; investment and reinvestment.**

(a) Except as provided in paragraph (e) or (f) of this section, or as otherwise directed or authorized by OFAC, any U.S. person holding funds, such as currency, bank deposits, or liquidated

financial obligations, subject to § 525.201 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For the purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) Funds held or placed in a blocked account pursuant to paragraph (a) of this section may not be invested in instruments the maturity of which exceeds 180 days.

(c) For the purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(d) For the purposes of this section, if interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(e) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 525.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (a) or (f) of this section.

(f) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 525.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(g) This section does not create an affirmative obligation for the holder of blocked tangible property, such as real or personal property, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, OFAC may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(h) Funds subject to this section may not be held, invested, or reinvested in a manner that provides financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 525.201, nor may their holder cooperate in or facilitate the pledging or

other attempted use as collateral of blocked funds or other assets.

#### **§ 525.204 Expenses of maintaining blocked tangible property; liquidation of blocked property.**

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of tangible property blocked pursuant to § 525.201 shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 525.201 may, in the discretion of OFAC, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

#### **§ 525.205 Exempt transactions.**

The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication that does not involve the transfer of anything of value.

#### **Subpart C—General Definitions**

##### **§ 525.300 Applicability of definitions.**

The definitions in this subpart apply throughout the entire part.

##### **§ 525.301 Blocked account; blocked property.**

The terms *blocked account* and *blocked property* mean any account or property subject to the prohibitions in § 525.201 held in the name of a person whose property and interests in property are blocked pursuant to § 525.201, or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to a license or other authorization from OFAC expressly authorizing such action.

**Note 1 to § 525.301.** See § 525.406 concerning the blocked status of property and interests in property of an entity that is directly or indirectly owned, whether individually or in the aggregate, 50 percent or more by one or more persons whose property and interests in property are blocked pursuant to § 525.201.

##### **§ 525.302 Effective date.**

(a) The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part, and with respect to a person whose property and interests in

property are blocked pursuant to § 525.201, the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

(b) For the purposes of this section, *constructive notice* is the date that a notice of the blocking of the relevant person's property and interests in property is published in the **Federal Register**.

#### § 525.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

#### § 525.304 Financial, material, or technological support.

The term *financial, material, or technological support* means any property, tangible or intangible, including currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods.

“Technologies” as used in this section means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

#### § 525.305 [Reserved]

#### § 525.306 Interest.

Except as otherwise provided in this part, the term *interest*, when used with respect to property (e.g., “an interest in property”), means an interest of any nature whatsoever, direct or indirect.

#### § 525.307 Licenses; general and specific.

(a) Except as otherwise provided in this part, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part or made available on OFAC's website: [www.treasury.gov/ofac](http://www.treasury.gov/ofac).

(c) The term *specific license* means any license or authorization issued pursuant to this part but not set forth in subpart E of this part or made available on OFAC's website: [www.treasury.gov/ofac](http://www.treasury.gov/ofac).

**Note 1 to § 525.307.** See § 501.801 of this chapter on licensing procedures.

#### § 525.308 OFAC.

The term *OFAC* means the Department of the Treasury's Office of Foreign Assets Control.

#### § 525.309 Person.

The term *person* means an individual or entity.

#### § 525.310 Property; property interest.

The terms *property* and *property interest* include money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership, or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

#### § 525.311 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree,

attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

#### § 525.312 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

#### § 525.313 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

#### § 525.314 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or other extensions of credit, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes depository institutions, banks, savings banks, trust companies, securities brokers and dealers, futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

### Subpart D—Interpretations

#### § 525.401 [Reserved]

#### § 525.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by

OFAC does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

**§ 525.403 Termination and acquisition of an interest in blocked property.**

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person whose property and interests in property are blocked pursuant to § 525.201, such property shall no longer be deemed to be property blocked pursuant to § 525.201, unless there exists in the property another interest that is blocked pursuant to § 525.201, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 525.201, such property shall be deemed to be property in which such person has an interest and therefore blocked.

**§ 525.404 Transactions ordinarily incident to a licensed transaction.**

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 525.201; or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

**§ 525.405 Setoffs prohibited.**

A setoff against blocked property (including a blocked account), whether by a U.S. financial institution or other U.S. person, is a prohibited transfer under § 525.201 if effected after the effective date.

**§ 525.406 Entities owned by one or more persons whose property and interests in property are blocked.**

Persons whose property and interests in property are blocked pursuant to

§ 525.201 have an interest in all property and interests in property of an entity in which such persons directly or indirectly own, whether individually or in the aggregate, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 525.201, regardless of whether the name of the entity is incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

**Subpart E—Licenses, Authorizations, and Statements of Licensing Policy**

**§ 525.501 General and specific licensing procedures.**

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. General licenses and statements of licensing policy relating to this part also may be available through the Burma sanctions page on OFAC's website: [www.treasury.gov/ofac](http://www.treasury.gov/ofac).

**§ 525.502 [Reserved]**

**§ 525.503 Exclusion from licenses.**

OFAC reserves the right to exclude any person, property, transaction, or class thereof from the operation of any license or from the privileges conferred by any license. OFAC also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

**§ 525.504 Payments and transfers to blocked accounts in U.S. financial institutions.**

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 525.201 has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

**Note 1 to § 525.504.** See § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 525.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

**§ 525.505 Entries in certain accounts for normal service charges.**

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

**§ 525.506 Provision of certain legal services.**

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 525.201 is authorized, provided that any receipt of payment of professional fees and reimbursement of incurred expenses must be authorized pursuant to § 525.507, which authorizes certain payments for legal services from funds originating outside the United States; via specific license; or otherwise pursuant to this part:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to legal, arbitration, or administrative proceedings before any U.S. Federal, state, or local court or agency;

(3) Initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. Federal, state, or local court or agency;

(4) Representation of persons before any U.S. Federal, state, or local court or agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S.

law requires access to legal counsel at public expense.

(b) The provision of any other legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 525.201, not otherwise authorized in this part, requires the issuance of a specific license.

(c) U.S. persons do not need to obtain specific authorization to provide related services, such as making filings and providing other administrative services, that are ordinarily incident to the provision of services authorized by this section. Additionally, U.S. persons who provide services authorized by this section do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. *See* § 525.404.

(d) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 525.201 is prohibited unless licensed pursuant to this part.

**Note 1 to § 525.506.** Pursuant to part 501, subpart E, of this chapter, U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from OFAC to authorize the release of certain blocked funds for the payment of professional fees and reimbursement of incurred expenses for the provision of such legal services where alternative funding sources are not available.

#### **§ 525.507 Payments for legal services from funds originating outside the United States.**

(a) *Professional fees and incurred expenses.* (1) Receipt of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 525.506(a) to or on behalf of any person whose property and interests in property are blocked pursuant to § 525.201 is authorized from funds originating outside the United States, provided that the funds do not originate from:

- (i) A source within the United States;
- (ii) Any source, wherever located, within the possession or control of a U.S. person; or
- (iii) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 525.506(a) are to be provided, whose

property and interests in property are blocked pursuant to any part of this chapter or any Executive order or statute.

(2) Nothing in paragraph (a) of this section authorizes payments for legal services using funds in which any other person whose property and interests in property are blocked pursuant to § 525.201, any other part of this chapter, or any Executive order or statute has an interest.

(b) *Reports.* (1) U.S. persons who receive payments pursuant to paragraph (a) of this section must submit annual reports no later than 30 days following the end of the calendar year during which the payments were received providing information on the funds received. Such reports shall specify:

(i) The individual or entity from whom the funds originated and the amount of funds received; and

(ii) If applicable:

(A) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(B) A general description of the services provided; and

(C) The amount of funds paid in connection with such services.

(2) The reports, which must reference this section, are to be submitted to OFAC using one of the following methods:

(i) Email (preferred method): *OFAC.Regulations.Reports@treasury.gov*; or

(ii) U.S. mail: OFAC Regulations Reports, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

#### **§ 525.508 Emergency medical services.**

The provision and receipt of nonscheduled emergency medical services that are prohibited by this part are authorized.

#### **§ 525.509 Official business of the United States Government.**

All transactions prohibited by this part that are for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof are authorized.

#### **Subpart F—Reports**

##### **§ 525.601 Records and reports.**

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of

this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

#### **Subpart G—Penalties and Findings of Violation**

##### **§ 525.701 Penalties and Findings of Violation.**

(a) The penalties available under section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA), as adjusted annually pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note) or, in the case of criminal violations, as adjusted pursuant to 18 U.S.C. 3571, are applicable to violations of the provisions of this part.

(b) OFAC has the authority, pursuant to IEEPA, to issue Pre-Penalty Notices, Penalty Notices, and Findings of Violation; impose monetary penalties; engage in settlement discussions and enter into settlements; refer matters to the United States Department of Justice for administrative collection; and, in appropriate circumstances, refer matters to appropriate law enforcement agencies for criminal investigation and/or prosecution. For more information, see appendix A to part 501 of this chapter, which provides a general framework for the enforcement of all economic sanctions programs administered by OFAC, including enforcement-related definitions, types of responses to apparent violations, general factors affecting administrative actions, civil penalties for failure to comply with a requirement to furnish information or keep records, and other general civil penalties information.

#### **Subpart H—Procedures**

##### **§ 525.801 Procedures.**

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

##### **§ 525.802 Delegation of certain authorities of the Secretary of the Treasury.**

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 14014 of February 10, 2021, and any further Executive orders issued pursuant to the national emergency declared therein, may be taken by the Director of OFAC or by any other person to whom the Secretary of

the Treasury has delegated authority so to act.

### Subpart I—Paperwork Reduction Act

#### § 525.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures, and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

### Appendix A to Part 525—Executive Order 14014 of February 10, 2021

#### Executive Order 14014 of February 10, 2021

##### Blocking Property With Respect to the Situation in Burma

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.*) (IEEPA), 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 the situation in and in relation to Burma, and in particular the February 1, 2021, coup, in which the military overthrew the democratically elected civilian government of Burma and unjustly arrested and detained government leaders, politicians, human rights defenders, journalists, and religious leaders, thereby rejecting the will of the people of Burma as expressed in elections held in November 2020 and undermining the country's democratic transition and rule of law, constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States. I hereby declare a national emergency to deal with that threat.

Accordingly, I hereby order:

**Section 1.** (a) All property and interests in property 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 of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: Any foreign person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) To operate in the defense sector of the Burmese economy or any other sector of the Burmese economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State;

(ii) to be responsible for or complicit in, or to have directly or indirectly engaged or attempted to engage in, any of the following:

(A) Actions or policies that undermine democratic processes or institutions in Burma;

(B) actions or policies that threaten the peace, security, or stability of Burma;

(C) actions or policies that prohibit, limit, or penalize the exercise of freedom of expression or assembly by people in Burma, or that limit access to print, online, or broadcast media in Burma; or

(D) the arbitrary detention or torture of any person in Burma or other serious human rights abuse in Burma;

(iii) to be or have been a leader or official of:

(A) The military or security forces of Burma, or any successor entity to any of the foregoing;

(B) the Government of Burma on or after February 2, 2021;

(C) an entity that has, or whose members have, engaged in any activity described in subsection (a)(ii) of this section relating to the leader's or official's tenure; or

(D) an entity whose property and interests in property are blocked pursuant to this order as a result of activities related to the leader's or official's tenure;

(iv) to be a political subdivision, agency, or instrumentality of the Government of Burma;

(v) to be a spouse or adult child of any person whose property and interests in property are blocked pursuant to this order;

(vi) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of any person whose property and interests in property are blocked pursuant to this order; or

(vii) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, the military or security forces of Burma or any person whose property and interests in property are blocked pursuant to this order.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted before the date of this order.

**Sec. 2.** The prohibitions in section 1 of this order include:

(a) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

**Sec. 3.** (a) The unrestricted immigrant and nonimmigrant entry into the United States of noncitizens determined to meet one or more of the criteria in section 1(a) of this order would be detrimental to the interests of the United States, and the entry of such persons into the United States, as immigrants or nonimmigrants, is hereby suspended, except where the Secretary of State or the Secretary of Homeland Security, as appropriate, determines that the person's entry would not be contrary to the interests of the United States, including when the Secretary of State

or the Secretary of Homeland Security, as appropriate, so determines, based on a recommendation of the Attorney General, that the person's entry would further important United States law enforcement objectives.

(b) The Secretary of State shall implement this authority as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security, may establish.

(c) The Secretary of Homeland Security shall implement this order as it applies to the entry of noncitizens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish.

(d) Such persons shall be treated by this section in the same manner 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).

**Sec. 4.** (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

**Sec. 5.** I hereby determine that the making of donations of the types of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by section 1 of this order.

**Sec. 6.** For the purposes of this order:

(a) The term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(b) the term "Government of Burma" means the Government of Burma, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Myanmar, and any person owned or controlled by, or acting for or on behalf of, the Government of Burma;

(c) the term "noncitizen" means any person who is not a citizen or noncitizen national of the United States;

(d) the term "person" means an individual or entity; and

(e) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

**Sec. 7.** For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national

emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

**Sec. 8.** The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury. All departments and agencies of the United States shall take all appropriate measures within their authority to carry out the provisions of this order.

**Sec. 9.** Nothing in this order is intended to affect the continued effectiveness of any action taken pursuant to Executive Order 13742 of October 7, 2016 (Termination of Emergency With Respect to the Actions and Policies of the Government of Burma).

**Sec. 10.** The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to submit recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

**Sec. 11.** (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.

Joseph R. Biden Jr.,  
The White House,  
February 10, 2021.

**Bradley T. Smith,**  
Acting Director, Office of Foreign Assets Control.

Approved:

**Andrea Gacki,**  
Director, Office of Foreign Assets Control,  
Performing the Duties of Under Secretary for  
Terrorism and Financial Intelligence,  
Department of the Treasury.

[FR Doc. 2021-11483 Filed 5-28-21; 8:45 am]

**BILLING CODE 4810-AL-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2021-0301]

#### Drawbridge Operation Regulation; Three Mile Creek, AL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations; request for comments.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the CSX Railroad drawbridge across Three Mile Creek, mile 0.0, Mobile, AL. This deviation is needed to collect and analyze data and information on vessel traffic when bridge openings are scheduled during specific periods during each day. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. The Coast Guard is seeking comments from the public regarding these proposed changes.

**DATES:** This deviation is effective from 6 a.m. June 1, 2021 through 6 p.m. August 2, 2021.

Comments and relate material must reach the Coast Guard on or before July 1, 2021.

**ADDRESSES:** You may submit comments identified by docket number USCG-2021-0301 using Federal eRulemaking Portal at <https://www.regulations.gov>.

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

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this test deviation, call or email Mr. Doug Blakemore, Eighth Coast Guard District Bridge Administrator; telephone (504) 671-2128, email [Douglas.A.Blakemore@uscg.mil](mailto:Douglas.A.Blakemore@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Background, Purpose and Legal Basis

The CSX Railroad drawbridge across Three Mile Creek, mile 0.0 in Mobile, AL operates under 33 CFR 117.500. In the open to vessel position the drawbridge has a horizontal clearance of 56 feet and unlimited vertical clearance. In the closed to vessel position the bridge has a vertical clearance of 10 feet.

This bridge has failed to open on signal when CSX builds trains from their rail yard in Mobile, AL that extend onto the drawbridge. CSX has changed

their rail yard operating schedule to open the bridge to vessel traffic each day from 6:30 a.m.–7:30 a.m., 2:30 p.m.–3:30 p.m. and 10:30 p.m.–11:30 p.m. During these periods CSX will not station trains on the bridge from their yard. All vessels in the queue will be passed through the bridge. CSX will open the bridge on signal at all other times if there are no trains on the bridge. This change will allow vessel operators to schedule their trips through this bridge and to pass through at all other times when there are no trains on the bridge.

From 6 a.m. June 1, 2021 through 6 p.m. August 2, 2021 the draw of the CSX railroad bridge across Three Mile Creek mile 0.0 shall open daily from 6:30 a.m.–7:30 a.m., 2:30 p.m.–3:30 p.m., and 10:30 p.m.–11:30 p.m. At all other times the draw shall open on signal if there are no train cars stationed on the bridge. During all openings the draw shall not close until the queue of all vessels seeking passage is cleared.

This 60 day test deviation will allow the Coast Guard to collect data on the impact of the proposed regulation change on vessels.

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

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

#### II. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned as being available in this docket and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified of any posting or updates to the docket.

Dated: May 20, 2021.

**Douglas A. Blakemore,**  
Bridge Administrator, Eighth Coast Guard District.

[FR Doc. 2021-11396 Filed 5-28-21; 8:45 am]

BILLING CODE 9110-04-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2020-0553; FRL-10023-65-Region 3]

#### Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the Erie Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision pertains to the Commonwealth's plan, submitted by the Pennsylvania Department of Environmental Protection (PADEP), for maintaining the 1997 8-hour ozone national ambient air quality standard (NAAQS) (referred to as the "1997 ozone NAAQS") in the Erie, Pennsylvania area ("Erie Area"). EPA is approving these revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on July 1, 2021.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2020-0553. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index,

some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Serena Nichols, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2053. Ms. Nichols can also be reached via electronic mail at [Nichols.Serena@epa.gov](mailto:Nichols.Serena@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On February 9, 2021 (86 FR 8722), EPA published a notice of proposed rulemaking (NPRM). In the NPRM, EPA proposed approval of Pennsylvania's plan for maintaining the 1997 ozone NAAQS in the Erie Area through November 8, 2027, in accordance with CAA section 175A. The formal SIP revision was submitted by PADEP on February 27, 2020.

##### II. Summary of SIP Revision and EPA Analysis

On October 9, 2007 (72 FR 57207, effective November 8, 2007), EPA approved a redesignation request (and maintenance plan) from PADEP for the Erie Area. In accordance with CAA section 175A(b), at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years, and in *South Coast Air Quality Management District v. EPA*,<sup>1</sup> the D.C. Circuit held that this requirement cannot be waived for areas, like the Erie Area, that had been redesignated to attainment for the 1997 8-hour ozone NAAQS prior to revocation and that were designated attainment for the 2008 ozone NAAQS. CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: (1) An

attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan.<sup>2</sup> PADEP's February 27, 2020 submittal fulfills Pennsylvania's obligation to submit a second maintenance plan and addresses each of the five necessary elements.

As discussed in the February 9, 2021 NPRM, EPA allows the submittal of a limited maintenance plan (LMP) to meet the statutory requirement that the area will maintain for the statutory period. Qualifying areas may meet the maintenance demonstration by showing that the area's design value<sup>3</sup> is well below the NAAQS and that the historical stability of the area's air quality levels indicates that the area is unlikely to violate the NAAQS in the future. EPA evaluated PADEP's February 27, 2020 submittal for consistency with all applicable EPA guidance and CAA requirements. EPA found that the submittal met CAA section 175A and all CAA requirements, and proposed approval of the LMP for the Erie Area as a revision to the Pennsylvania SIP. Other specific requirements of PADEP's February 27, 2020 submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

#### III. EPA's Response to Comments Received

EPA received four comments on the February 9, 2021 NPRM but only one that was adverse and relevant to this action. All comments are in the docket for this rule action. A summary of the relevant adverse comment and EPA's response is provided herein.

**Comment:** The commenter asserts that the LMP should not be approved because "Pennsylvania identifies no actual contingency measures." According to the commenter, a "contingency measure is supposed to be a known measure that can be quickly implemented by a state in order to prevent the violation of the NAAQS." The comment asserts that the plan's current contingency measures are defective because they allegedly will not be evaluated and determined until after an exceedance of the NAAQS has

<sup>2</sup> "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni Memo).

<sup>3</sup> The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area.

occurred. The comment claims that EPA is aware Pennsylvania has a history of not meeting its CAA requirements on time, and that it can take Pennsylvania more than two years to implement a regulation, which would be too long to prevent a violation of the NAAQS.

**Response:** The commenter asserts that Pennsylvania identifies no actual contingency measures because the measures are not yet “evaluated” and “determined” and cannot be implemented before a violation of the NAAQS occurs. Because Pennsylvania identifies two regulatory and six non-regulatory contingency measures in general terms, EPA understands the comment’s use of the term “evaluated” and “determined” must mean something like the specific measures identified by PADEP have not been fully promulgated and are not in effect at this time. If EPA’s understanding is correct, EPA agrees with this fact, but does not agree that this has any bearing on the approvability of the particular contingency measures or of the overall LMP.

PADEP identifies six non-regulatory measures and two regulatory measures. The two regulatory measures are “additional controls” on consumer products and portable fuel containers. The six non-regulatory measures are: Voluntary diesel engine “chip refresh;” diesel retrofit for public or private local onroad or offroad fleets; idling reduction technology for Class 2 yard locomotives; idling technologies or strategies for truck stops, warehouses, and other freight-handling facilities; accelerated turnover of lawn and garden equipment; additional promotion of alternative fuel for home heating and agriculture use. As stated in the Calcagni memo, EPA’s long-standing interpretation is that contingency measures for maintenance of the NAAQS are not required to be fully adopted in order to be approved. The commenter refers to a recent court case vacating, among other things, the contingency measure provisions in EPA’s rule for implementing the 2015 ozone NAAQS, *Sierra Club v. EPA*, No. 15–1465 (D.C. Cir. January 29, 2021). It is possible that the commenter has conflated the contingency measure provisions at issue in that case, which pertained to attainment plans, and those at issue in this LMP, which pertain to maintenance plans. The contingency measure provisions for maintenance and attainment are found in two different sections of the CAA, with substantially different wording and requirements. The attainment plan contingency measures provisions in CAA Section 172(c)(9) require that the attainment

plan have “specific measures” that can “take effect in any such case without further action by the State or the Administrator” if the area fails to make reasonable further progress or attain the NAAQS. 42 U.S.C. 7502(c)(9). Section 175A of the CAA sets forth the contingency measure requirements for maintenance areas. Section 175A(d) requires that the maintenance plan contain “such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area.” 42 U.S.C. 7505a(d). Unlike Section 172(c)(9), there is not requirement under section 175A that the contingency measures be set forth with specificity or that they be able to take effect without further action by EPA or the State.

With this statutory background in mind, EPA does not agree that the plan should be disapproved due to PADEP’s ability to promulgate a contingency measure in sufficient time to avert a violation of the NAAQS. As noted previously, CAA section 175A(d) mandates that a maintenance plan must contain “such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area.” (emphasis added). The statute therefore does not include any requirement that a maintenance plan’s contingency measures prevent a violation of the NAAQS, but rather only that those selected measures be available to address a violation of the NAAQS after it already occurs. Pennsylvania also elected to adopt a “warning level response,” which states that PADEP will consider adopting contingency measures if, for two consecutive years, the fourth highest eight-hour ozone concentrations at any monitor in the area are above 84 parts per billion (ppb). But this warning level response is not required under the CAA, and therefore we do not agree with the commenter that the plan should be disapproved based on the commenter’s concern over the timeliness of the warning level response implementation.

Moreover, as a general matter, we do not agree that the schedules for implementation of contingency provisions in the LMP are insufficient. As noted, the CAA provides some degree of flexibility in assessing a maintenance plan’s contingency measures—requiring that the plan contain such contingency provisions “as the Administrator deems necessary” to assure that any violations of the NAAQS

will be “promptly” corrected. EPA’s longstanding guidance for redesignations, the Calcagni Memo, also does not provide precise parameters for what strictly constitutes “prompt” implementation of contingency measures, noting that, for purposes of CAA section 175A, “a state is not required to have fully adopted contingency measures that will take effect without further action by the state in order for the maintenance plan to be approved.” Calcagni memo at 12. However, the guidance does state that the plan should ensure that the measures are adopted “expeditiously” once they are triggered, and should provide “a schedule and procedure for adoption and implementation, and a specific time limit for action by the state.” *Id.* We think the state’s plan, which provides specific lists of regulatory and non-regulatory measures that the state would consider after evaluating and assessing what it believed to be the cause of increased ozone concentrations, and the specific timeframes it would use to expediently implement the various measures, meets the requirements of CAA section 175A.

#### IV. Final Action

EPA is approving PADEP’s second maintenance plan for the Erie Area for the 1997 ozone NAAQS as a revision to the Pennsylvania SIP.

#### V. Statutory and Executive Order Reviews

##### A. General Requirements

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### B. Submission to Congress and the Comptroller General

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

#### C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving PADEP’s second maintenance plan for the Erie Area for the 1997 ozone

NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

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

Dated: May 19, 2021.

**Diana Esher,**

*Acting Regional Administrator, Region III.*

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

#### Subpart NN—Pennsylvania

- 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for “Second Maintenance Plan for the Erie 1997 8-Hour Ozone Nonattainment Area” at the end of the table to read as follows:

##### § 52.2020 Identification of plan.

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

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * * Second Maintenance Plan for the Erie 1997 8-Hour Ozone Nonattainment Area.	* Erie Area .....	* 2/27/20	* 6/1/21, [insert <b>Federal Register</b> citation].	* * * * * The Erie area consists solely of Erie County.

\* \* \* \* \*

[FR Doc. 2021-11401 Filed 5-28-21; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 271

**[EPA-R09-RCRA-2019-0491; FRL-10023-58-Region 9]**

#### California: Authorization of State Hazardous Waste Management Program Revisions; Final Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final authorization; correction.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing corrections to the authorization of California’s hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA approved revisions to California’s federally authorized hazardous waste program (specifically, updates to California’s Universal Waste program) by publishing proposed and final rules in the **Federal Register** on October 18, 2019, and January 14, 2020, respectively. On March 5, 2021, the Agency published and sought public comment on a Proposed Rule to correct information

contained in the October 18, 2019, **Federal Register** proposal and the January 14, 2020 approval. No comments were received on the proposed revisions. This document finalizes those corrections.

**DATES:** This final authorization is effective July 1, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-RCRA-2019-0491. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Laurie Amaro, EPA Region 9, 75 Hawthorne St. (LND-1-1), San

Francisco, CA 94105. By phone: (415) 972-3364 or by email at [Amaro.Laurie@epa.gov](mailto:Amaro.Laurie@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. What corrections to California's hazardous waste program is the EPA authorizing with this action?

The EPA approved revisions to California's federally authorized hazardous waste program by publishing proposed and final rules in the **Federal Register** on October 18, 2019 (80 FR 55871), and January 14, 2020 (85 FR 2038), respectively. On March 5, 2021, the EPA proposed to add citations for approving the State's authority to adopt additional waste streams as universal wastes in the *State Analogues to the Federal Program* table and revise the scope of the State program that is considered "broader in scope" than the Federal program. The changes detailed in the proposed correction are summarized below.

1. The EPA added citations to the table for Title 22 of the California Code of Regulations (CCR) 66260.22 and 66260.23 and the Federal analogues, 40 CFR 260.20(a) and 260.23(a) through (d), respectively. In addition, the EPA added a footnote to the table clarifying the implications of the authorization of the State's universal waste program as to a waste stream that the State already identified as a universal waste before the universal waste authorization update was effective, *i.e.*, aerosol cans. (Similarly, effective January 1, 2021, California also now includes photovoltaic solar panels in the State's universal waste program.)

2. The EPA revised the list of California requirements that the EPA considers beyond the scope of the Federal program by deleting California-only universal wastes (further defined as non-RCRA hazardous wastes) from the list of State requirements that are broader in scope than the Federal program and adding language to the broader in scope analysis that specifies that any non-RCRA hazardous wastes that the State regulates as a hazardous waste are generally considered beyond the scope of the Federal program.

No comments were received on the proposal. The corrections are hereby finalized and the changes to the scope of California's authorized universal hazardous waste program will become effective on the date listed in the **DATES** section above.

##### B. What is codification and is the EPA codifying California's hazardous waste program as authorized in this rule?

Codification is the process of placing citations and references to the State's

statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. The EPA does this by adding those citations and references to the authorized state rules in 40 CFR part 272. The EPA is not codifying the authorization of California's revisions at this time. However, the EPA reserves the right to amend 40 CFR part 272, subpart F, for the authorization of California's program at a later date.

#### C. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action (RCRA state authorization) from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore, this action is not subject to review by OMB. This action finalizes corrections to the authorization of state requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by state law. Accordingly, this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action finalizes corrections to the authorization of pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely corrects the **Federal Register** document in which the EPA authorized state requirements as part of the state RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children. This correction is not subject to

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), the EPA grants a state's application for authorization, as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 do not apply. See 15 U.S.C. 272 note, sec. 12(d)(3), Public Law 104-113, 110 Stat. 783 (Mar. 7, 1996) (exempting compliance with the NTTAA's requirement to use VCS if compliance is "inconsistent with applicable law"). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this correction to its rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the correction to the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This correction to the rule authorizing California's universal waste program does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this correction to the California universal waste authorization rule authorizes pre-existing state rules which are at least equivalent to, and no less stringent than existing Federal

requirements, and imposes no additional requirements beyond those imposed by state law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document 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 final rule correction in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This correction is not a “major rule” as defined by 5 U.S.C. 804(2).

**Authority:** This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: May 24, 2021.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2021-11394 Filed 5-28-21; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 120404257-3325-02; RTID 0648-XB110]

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2021 Commercial Hook-and-Line Closure for South Atlantic Golden Tilefish

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements an accountability measure for the commercial hook-and-line component of golden tilefish in the South Atlantic exclusive economic zone (EEZ). NMFS projects that commercial hook-and-line landings for golden tilefish will reach the commercial quota for the hook-and-line component by June 1, 2021.

Therefore, NMFS closes the commercial hook-and-line component for golden tilefish in the South Atlantic EEZ on June 1, 2021. This closure is necessary to protect the golden tilefish resource. **DATES:** This temporary rule is effective at 12:01 a.m., Eastern Time, on June 1, 2021, until 12:01 a.m., Eastern Time, on January 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Mary Vara, NMFS Southeast Regional Office, telephone: 727-824-5305, email: [mary.vara@noaa.gov](mailto:mary.vara@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic includes golden tilefish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and NMFS, and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights in this temporary rule are given in gutted weight.

The commercial sector for golden tilefish has two components, each with its own quota: The hook-and-line and longline components (50 CFR 622.190(a)(2)). The golden tilefish commercial annual catch limit (ACL) is allocated 25 percent to the hook-and-line component and 75 percent to the longline component. The total commercial ACL (equivalent to the commercial quota) for golden tilefish is 331,740 lb (150,475 kg), and the hook-and-line component ACL is 82,935 lb (37,619 kg).

Under 50 CFR 622.193(a)(1)(i), NMFS is required to close the commercial hook-and-line component for golden tilefish when its commercial ACL has been reached, or is projected to be reached, by filing such a notification with the Office of the Federal Register. NMFS has determined that the commercial ACL for the golden tilefish hook-and-line component in the South Atlantic will be reached by June 1, 2021. Accordingly, the commercial hook-and-line component of South Atlantic golden tilefish is closed effective at 12:01 a.m., Eastern Time, on June 1, 2021.

The commercial longline component for South Atlantic golden tilefish also closed on March 31, 2021, and will remain closed for the remainder of the current fishing year, through December 31, 2021 (86 FR 14549; March 17, 2021). Therefore, because the commercial longline component is already closed, and NMFS is closing the commercial

hook-and-line component through this temporary rule, all harvest of South Atlantic golden tilefish in the EEZ is limited to the recreational bag and possession limits specified in 50 CFR 622.187(b)(2)(iii) and (c)(1) as long as the recreational sector is open.

The operator of a vessel with a valid Federal commercial vessel permit for South Atlantic snapper-grouper having golden tilefish on board harvested by hook-and-line must have landed and bartered, traded, or sold such golden tilefish prior to 12:01 a.m., Eastern Time, on June 1, 2021. During the closure, the sale or purchase of golden tilefish taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of golden tilefish that were harvested by hook-and-line, landed ashore, and sold prior to 12:01 a.m., Eastern Time, on June 1, 2021, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the recreational bag and possession limits and the sale and purchase prohibitions during the commercial closure for golden tilefish apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.190(c)(1)(ii).

#### Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.193(a)(1), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations associated with the commercial closure of the golden tilefish hook-and-line component have already been subject to notice and public comment, and all that remains is to notify the public of the closure. Such procedures are also contrary to the public interest because of the need to immediately implement the closure to protect the golden tilefish resource and minimize the risk of exceeding the sector's ACL. Prior notice and opportunity for public comment would require time and would result in exceeding the sector's ACL.

For the aforementioned reasons, the Acting Assistant Administrator also finds good cause to waive the 30-day

delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: May 26, 2021.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 2021-11492 Filed 5-27-21; 4:15 pm]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 201204-0325]

RIN 0648-BK53

#### Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2021–2022 Biennial Specifications and Management Measures; Inseason Adjustments

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

**ACTION:** Final rule; inseason adjustments to biennial groundfish management measures.

**SUMMARY:** This final rule announces routine inseason adjustments to the harvest limits for incidental Pacific halibut retention in the sablefish primary fishery. The Pacific Fishery Management Council recommended, and NMFS is implementing, a decrease to the incidental Pacific halibut catch limit to ensure equitable harvest opportunities without exceeding the harvest limit.

**DATES:** This final rule is effective June 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Abbie Moyer, phone: 206-305-9601 or email: [abbie.moyer@noaa.gov](mailto:abbie.moyer@noaa.gov).

#### Electronic Access

This rule is accessible via the internet at the Office of the Federal Register website at <https://www.federalregister.gov>. Background information and documents are available at the Pacific Fishery Management Council's website at <http://www.pcouncil.org/>.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Pacific Coast Groundfish Fishery Management Plan (PCGFMP), and its implementing regulations at 50 CFR part

660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. The Pacific Fishery Management Council (Council) develops groundfish harvest specifications and management measures for two-year periods (*i.e.*, a biennium). NMFS published the final rule to implement harvest specifications and management measures for the 2021–2022 biennium for most species managed under the PCGFMP on December 11, 2020, (85 FR 79880). NMFS also published a correction (85 FR 86853, December 31, 2020), and a correcting amendment (86 FR 14379, March 16, 2021) to implement the Council's recommendations for the 2021–2022 harvest specifications and management measures.

In general, the management measures set at the start of the biennial harvest specifications cycle help the various sectors of the fishery attain, but not exceed, the catch limits for each stock. The Council, in coordination with Pacific Coast Treaty Indian Tribes and the states of Washington, Oregon, and California, recommends adjustments to the management measures during the fishing year to achieve this goal. At its March 2–5 and 8–11, 2021, meeting, the Council recommended decreasing the amount of Pacific halibut that vessels in the sablefish primary fishery north of Point Chehalis, WA, may take incidentally to ensure that catch of Pacific halibut stays within the allocated amount.

Pacific halibut is generally a prohibited species for vessels fishing in Pacific coast groundfish fisheries, unless explicitly allowed in groundfish regulations. The Council developed a Catch Sharing Plan for the International Pacific Halibut Commission (IPHC) Regulatory Area 2A, as provided for in the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773–773k), to allocate the Area 2A annual total allowable catch (TAC) for Pacific halibut among fisheries off Washington, Oregon, and California.

Under the Catch Sharing Plan, the sablefish primary fishery north of Point Chehalis, WA (46°53.30' N lat.) is allocated a portion of the Washington recreational allocation, which varies via a TAC-dependent formula, as described in the Catch Sharing Plan.

The sablefish primary fishery season is open from April 1 to October 31, though the fishery may close for individual participants prior to October 31 once they reach the cumulative limit associated with their tier assignment(s). Regulations at § 660.231(b)(3)(iv) allow vessels fishing in the sablefish primary

fishery with a permit from the IPHC to retain Pacific halibut up to a set landing limit, which may be reviewed and modified throughout the sablefish primary fishery season to allow for attainment, but not exceedance of the Pacific halibut allocation. The objectives for the annual landing restrictions are to allow incidental Pacific halibut catch to attain the Pacific halibut allocation at about the same time the sablefish primary season ends (October 31), and to ensure an equitable sharing of the Pacific halibut landings among the fishers.

On March 9, 2021, NMFS implemented a 2021 Area 2A TAC of 1,510,000 pound (lb) (684.9 metric tons (mt)) (86 FR 13475). As specified by the Catch Sharing Plan, since the 2021 Area 2A catch limit is greater than 1.5 million pounds (680.4 mt), the incidental halibut limit for the sablefish primary fishery's allocation is 70,000 lb (31.8 mt) (86 FR 13475, March 9, 2021), the same limit as was in place in 2020. In 2020, due to the COVID-19 pandemic affecting vessel participation, harvest during the regular sablefish primary fishery season was lower than predicted. As a result, at the September 2020 Council meeting, the Council recommended, and NMFS implemented, an emergency rule to extend the sablefish primary season, normally scheduled to end on October 31, until December 31, 2020 (85 FR 68001, October 27, 2020). Also, as part of that emergency rule, the incidental Pacific halibut retention allowance continued until the close of the Pacific halibut season on November 15, 2020. The 2020 season concluded with 90.5 percent of the 70,000 lb (31.8 mt) allowance for Pacific halibut landed. The effects of the COVID-19 pandemic on sablefish primary fishery harvest are expected to be lessened in 2021, compared to 2020. If fishing patterns return to more typical seasonal efforts in 2021, the incidental Pacific halibut retention limit in place in 2020 may be too high, and harvest of Pacific halibut may accrue too quickly to allow retention throughout the entire sablefish primary season, which is expected to run through October 31, 2021. Therefore, at the March 2021 virtual meeting, the Council recommended a precautionary reduction in Pacific halibut retention allowance early in the 2021 sablefish primary fishery season to discourage targeted fishing while allowing small incidental catches through the end of the season on October 31.

The Council recommended, and NMFS is revising the incidental Pacific halibut retention regulations at

§ 660.231(b)(3)(iv) to decrease the incidental Pacific halibut catch limit to enable some efficiency without exceeding the harvest limit. The limit will be reduced from 250 lb (113 kg) dressed weight of halibut for every 1,000 lb (454 kg) dressed weight of sablefish landed, and up to two halibut in excess of the ratio, to 225 lb (102 kg) dressed weight of halibut for every 1,000 lb (454 kg) dressed weight of sablefish landed, and up to two halibut in excess of the ratio. This decrease is expected to allow opportunity for total catch of Pacific halibut to approach, but not exceed, the 2021 allocation for the sablefish primary fishery north of Point Chehalis, WA (70,000 lb or 31.8 mt).

#### Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best scientific information available, consistent with the PCGFMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection by contacting Abbie Moyer in NMFS' West Coast Region (see **FOR FURTHER INFORMATION CONTACT**, above), or view at the NMFS West Coast Groundfish website: <http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html>.

NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b) because notice and comment would be impracticable and contrary to the public interest. The adjustments to management measures in this document affect commercial fisheries off the coast of Washington. No aspect of this action is controversial, and changes of this nature were anticipated in the final rule for the 2021–2022 harvest specifications and management measures, which was published on December 11, 2020 (85 FR 79880). Accordingly, for the reasons stated below, NMFS finds good cause to waive prior notice and comment.

At its March 2021 meeting, the Council recommended the decrease to

the incidental Pacific halibut retention limit for vessels fishing in the sablefish primary fishery north of Point Chehalis. The sablefish primary fishery opened on April 1. The Council recommends this precautionary reduction be implemented as soon as possible, early in the season, in an effort to prolong the amount of time Pacific halibut may be retained in the sablefish primary fishery north of Point Chehalis.

Additionally, if the new limit is not implemented until closer to the end of the season, after a full rulemaking, the sablefish primary fishery north of Point Chehalis would be more likely to reach or exceed its 2021 allocation of Pacific halibut before the end of the sablefish primary fishery season. Therefore, providing a comment period for this action could limit the equitable benefits to the fishery, and the vessels that participate in the fishery, as they rely on the Pacific halibut retention allowance throughout the entire season and could result in a greater risk of exceeding the Pacific halibut harvest allocation.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this rule and none has been prepared.

For the same reasons stated above, NMFS has determined good cause exists to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d) so that this final rule may become effective upon publication in the **Federal Register**. The adjustments to management measures in this document affect commercial fisheries by decreasing the incidental halibut retention limit in the sablefish primary fishery north of Point Chehalis, WA. This adjustment was requested by the Council's advisory bodies, as well as members of industry during the Council's March 2021, meeting, and recommended unanimously by the Council. No aspect of this action is controversial, and changes of this nature were anticipated in the biennial harvest specifications and management measures established through a notice

and comment rulemaking for 2021–2022 (85 FR 79880, December 11, 2020).

#### List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: May 25, 2021.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

#### PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.231, revise paragraph (b)(3)(iv) to read as follows:

##### § 660.231 Limited entry fixed gear sablefish primary fishery.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iv) Incidental Pacific halibut retention north of Pt. Chehalis, WA (46°53.30' N lat.). From April 1 through October 31, vessels authorized to participate in the sablefish primary fishery, licensed by the International Pacific Halibut Commission for commercial fishing in Area 2A (waters off Washington, Oregon, California), and fishing with longline gear north of Pt. Chehalis, WA (46°53.30' N lat.) may possess and land up to 225 lbs (102 kg) dressed weight of Pacific halibut for every 1,000 lbs (454 kg) dressed weight of sablefish landed, and up to two additional Pacific halibut in excess of the 225-lbs-per-1,000-pound limit per landing. “Dressed” Pacific halibut in this area means halibut landed eviscerated with their heads on. Pacific halibut taken and retained in the sablefish primary fishery north of Pt. Chehalis may only be landed north of Pt. Chehalis and may not be possessed or landed south of Pt. Chehalis.

\* \* \* \* \*

[FR Doc. 2021-11417 Filed 5-28-21; 8:45 am]

**BILLING CODE 3510-22-P**

# Proposed Rules

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-2021-0379; Project Identifier MCAI-2021-00068-R]

RIN 2120-AA64

### Airworthiness Directives; Airbus Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede Airworthiness Directive (AD) 2016-12-51, which applies to all Airbus Helicopters Model AS332L2 and Model EC225LP helicopters. AD 2016-12-51 prohibits all further flight of Model AS332L2 and Model EC225LP helicopters. AD 2016-12-51 was prompted by an accident in which the main rotor hub detached from the main gearbox (MGB). Since the FAA issued AD 2016-12-51, the design approval holder has developed procedures that address failure of the main rotor system. This proposed AD would require replacing certain second stage planet gear assemblies, removing certain epicyclic modules, installing a full flow magnetic plug (FFMP), revising the existing rotorcraft flight manual (RFM) for your helicopter, repetitively inspecting the MGB particle detectors, repetitively inspecting the MGB oil filter and oil cooler, and corrective action if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The actions specified in the proposed AD would terminate the flight prohibition. 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 July 16, 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 is proposed for IBR in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find this IBR material on the EASA website at <https://ad.easa.europa.eu>. You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817-222-5110. It is also available in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0379.

### 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-2021-0379; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

### FOR FURTHER INFORMATION CONTACT:

Mahmood Shah, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817-222-5538; email [mahmood.g.shah@faa.gov](mailto:mahmood.g.shah@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

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under **ADDRESSES**. Include “Docket No. FAA-2021-0379; Project Identifier MCAI-2021-00068-R” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposal.

### 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 Mahmood Shah, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817-222-5538; email [mahmood.g.shah@faa.gov](mailto:mahmood.g.shah@faa.gov). Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

### Discussion

The FAA issued AD 2016-12-51, Amendment 39-18578 (81 FR 43479, July 5, 2016) (AD 2016-12-51), which applies to all Airbus Helicopters Model AS332L2 and EC225LP helicopters. AD 2016-12-51 prohibits all further flight of Airbus Helicopters Model AS332L

and EC225LP helicopters. The FAA issued AD 2016-12-51 to address an accident involving an EC225LP helicopter in which the main rotor hub detached from the MGB. The Airbus Helicopters Model AS332L2 helicopter has a similar design to the affected Model EC225LP helicopter, therefore, this model may be subject to the unsafe condition revealed on the Model EC225LP helicopter.

#### **Actions Since AD 2016-12-51 Was Issued**

Since the FAA issued AD 2016-12-51, the design approval holder has developed procedures that address failure of the main rotor system. These procedures terminate the flight prohibition required by AD 2016-12-51. In addition, after AD 2016-12-51 was issued, the FAA issued an Alternate Means of Compliance (AMOC) letter dated September 7, 2017, which addressed the flight prohibition required by paragraph (e) of AD 2016-12-51. The AMOC letter lifted the flight prohibition and allowed operation of the affected helicopter models provided the conditions specified in the AMOC letter were followed, which include repetitive inspections that have no terminating action. This proposed AD includes terminating action for certain repetitive inspections.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017-0134R2, dated April 16, 2020 (EASA AD 2017-0134R2) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus Helicopters Model AS332L2 and EC225LP helicopters.

This proposed AD was prompted by an accident involving a Model EC225LP helicopter in which the main rotor hub detached from the MGB. The FAA is proposing this AD to address failure of the main rotor system, which would result in loss of control of the helicopter. See the MCAI for additional background information.

#### **Related Service Information Under 1 CFR Part 51**

EASA AD 2017-0134R2 references procedures for replacing certain second stage planet gear assemblies with serviceable parts; removing certain epicyclic modules from service; modifying the helicopter by installing an FFMP; revising the RFM to prohibit MGB particle burning in-flight; repetitively inspecting the FFMP and MGB particle detectors for metal particles, analyzing any metal particles that are found, and corrective action;

and repetitively inspecting the MGB oil filter and oil cooler for particles and corrective action. The corrective actions include replacing an affected MGB with a serviceable MGB. EASA AD 2017-0134R2 also provides terminating action for certain repetitive inspections.

Airbus Helicopters has issued Emergency Alert Service Bulletin EC225 05A049, Revision 6, dated July 25, 2017; and Emergency Alert Service Bulletin AS 332 05.01.07, Revision 6, dated July 27, 2017. The service information specifies procedures for, among other things, replacing the MGB.

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**

These products have been approved by the aviation authority of another country, and are approved for operation in the United States. Pursuant to the 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 after evaluating all the relevant information and determining the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

#### **Proposed AD Requirements**

This proposed AD would require accomplishing the actions specified in EASA AD 2017-0134R2 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under "Differences Between this Proposed AD and the MCAI."

#### **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 2017-0134R2 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2017-0134R2 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 2017-0134R2 that is required for compliance with EASA AD 2017-0134R2 will be available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0379 after the FAA final rule is published.

#### **Differences Between This Proposed AD and the MCAI**

Although the service information referenced in EASA AD 2017-0134R2 specifies to return affected planetary gear assemblies to the manufacturer for module overhaul, this proposed AD does not include that requirement.

Although the service information referenced in EASA AD 2017-0134R2 specifies that retrofit of the planet gear of the MGB can only be done by Airbus Helicopters or Airbus Helicopters approved repair centers, this proposed AD does not include that requirement.

EASA AD 2017-0134R2 requires operators to "inform all flight crews" of revisions to the RFM, and thereafter to "operate the helicopter accordingly." However, this AD would not specifically require those actions.

FAA regulations require pilots to follow the procedures in the existing RFM including all updates. 14 CFR 91.9 requires that no person may operate a civil aircraft without complying with the operating limitations specified in the RFM. Therefore, including a requirement in this AD to operate the airplane according to the revised RFM would be redundant and unnecessary. Further, compliance with such a requirement in an AD would be impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the airplane in such a manner would be unenforceable.

#### **Interim Action**

The FAA considers this proposed AD interim action. If final action is later identified, the FAA might consider further rulemaking then.

#### **Costs of Compliance**

The FAA estimates that this proposed AD affects 28 helicopters 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
New proposed actions .....	Up to 6 work-hours × \$85 per hour = \$510	\$0	Up to \$510 .....	Up to \$14,280.

\* 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 proposed reporting requirement in this proposed AD. The average labor rate is \$85 per hour. Based

on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be \$2,380, or \$85 per product.

The FAA estimates the following costs to do any necessary on-condition

actions that would be required based on the results of any required actions. The FAA has no way of determining the number of helicopters that might need these on-condition actions:

#### ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
40 work-hours × \$85 per hour = \$3,400 .....	\$295,000	\$298,400

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.

#### 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 current valid OMB control number. The control number for the collection of information required by this proposed AD is 2120-0056. The paperwork cost associated with this proposed AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this proposed AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed 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

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 2016-12-51, Amendment 39-18578 (81 FR 43479, July 5, 2016); and

■ b. Adding the following new airworthiness directive:

**Airbus Helicopters:** Docket No. FAA-2021-0379; Project Identifier MCAI-2021-00068-R.

#### (a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 16, 2021.

#### (b) Affected ADs

This AD replaces AD 2016-12-51, Amendment 39-18578 (81 FR 43479, July 5, 2016 (AD 2016-12-51)).

#### (c) Applicability

This AD applies to all Airbus Helicopters Model AS332L2 and EC225LP helicopters, certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 6320, Main Rotor Gearbox.

**(e) Reason**

This AD was prompted by an accident involving a Model EC225LP helicopter in which the main rotor hub detached from the main gearbox. The FAA is issuing this AD to address failure of the main rotor system, which would result in loss of control of the helicopter.

**(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 2017-0134R2, dated April 16, 2020 (EASA AD 2017-0134R2).

**(h) Exceptions to EASA AD 2017-0134R2**

(1) Where EASA AD 2017-0134R2 refers to the effective dates specified in paragraphs (h)(1)(i) through (v) of this AD, this AD requires using the effective date of this AD.

(i) The effective date of EASA AD 2017-0134R2.

(ii) October 13, 2016 (the effective date of EASA AD 2016-0199, dated October 7, 2016).

(iii) March 20, 2017 (the effective date of EASA AD 2017-0050-E, dated March 17, 2017).

(iv) June 30, 2017 (the effective date of EASA AD 2017-0111, dated June 23, 2017).

(v) August 1, 2017 (the effective date of EASA AD 2017-0134, dated July 27, 2017).

(2) The "Remarks" section of EASA AD 2017-0134R2 does not apply to this AD.

(3) Where any service information referred to in EASA AD 2017-0134R2 specifies to discard certain parts after they have been removed from the helicopter, this AD requires removing those parts from service.

(4) Where paragraph (2) of EASA AD 2017-0134R2 specifies to replace a part before exceeding the applicable "new service life limit," this AD requires removing that part from service.

(5) Where any service information referred to in EASA AD 2017-0134R2 specifies to return certain parts to the manufacturer, including for overhaul, after they have been removed from the helicopter, this AD does not include that requirement.

(6) Where EASA AD 2017-0134R2 refers to flight hours (FH), this AD requires using hours time-in-service.

(7) Where any service information referred to in EASA AD 2017-0134R2 specifies to perform a metallurgical analysis and contact the manufacturer if unsure about the characterization of the particles collected, this AD does not require characterization of the particles collected, however this AD does not require contacting the manufacturer to determine the characterization of the particles collected.

(8) Where EASA AD 2017-0134R2 requires actions during each "after last flight" of the

day (ALF) inspection, this AD requires those actions before the first flight of each day.

(9) Where any service information referred to in EASA AD 2017-0134R2 specifies to do the actions identified in paragraphs (h)(9)(i) through (iv) of this AD, this AD does not include those requirements.

(i) Watch a video for removing the grease from the full flow magnetic plug (FFMP), using a cleaning agent, and collecting particles.

(ii) Return affected planetary gear assembly to the manufacturer for module overhaul.

(iii) Contact the approved repair station/ Airbus Helicopters if the reason for a repair to an epicyclic module is unknown and inform/contact Airbus Helicopters.

(iv) Contact the approved repair station/ Airbus Helicopters depending on who performed the last overhaul (RG) to determine if a repair has been done on the second stage planet gears since new.

(10) Where any service information referred to in EASA AD 2017-0134R2 specifies that retrofit of the planet gear of the main gearbox (MGB) can only be done by Airbus Helicopters or Airbus Helicopters approved repair centers, this AD does not require that the retrofit of the planet gear be done only by Airbus Helicopters or Airbus Helicopters approved repair centers. For this AD the retrofit can also be done by an FAA-approved repair station.

(11) Where paragraph (5) of EASA AD 2017-0134R2 specifies accomplishing the FFMP additional work within 3 months after August 1, 2017, this AD requires accomplishing the FFMP additional work within 4 months after the effective date of this AD.

(12) Where paragraph (6) of EASA AD 2017-0134R2 specifies to "inform all flight crews and, thereafter, operate the helicopter accordingly," this AD does not require those actions.

(13) Where any service information referred to in EASA AD 2017-0134R2 specifies that if any 16NCD13 particles are found you are to take a 1-liter sample of oil and send it to the manufacturer, this AD does not require those actions.

(14) Where any service information referred to in EASA AD 2017-0134R2 specifies "Do not resume flights until corrective action(s) are agreed by Airbus Helicopters," or to contact Airbus Helicopters before resuming flights "if further particles are collected during the close monitoring period," for this AD, you must repair before further flight using a method specified in paragraph (h)(14)(i) or (ii) of this AD.

(i) In accordance with FAA approved procedures.

(ii) In accordance with the procedures specified in Appendix 4.A., Particle Analysis, of Airbus Helicopters Emergency Alert Service Bulletin EC225 05A049, Revision 6, dated July 25, 2017; or Emergency Alert Service Bulletin AS 332 05.01.07, Revision 6, dated July 27, 2017, as applicable, except as required by paragraphs (h)(5), (7), and (13) of this AD.

(15) Where the service information identified in EASA AD 2017-0134R2 specifies to report inspection results to

Airbus Helicopters, for this AD, report the inspection results at the applicable time specified in paragraph (h)(15)(i) or (ii) of this AD.

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

(ii) 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) Credit for Previous Actions**

(1) This paragraph provides credit for the actions specified in paragraph (4) of EASA AD 2017-0134R2, if those actions were performed before the effective date of this AD using Airbus Helicopters Emergency Alert Service Bulletin AS332 ASB 63.00.83 or EC225 ASB 63A030, both Revision 1, both dated October 7, 2016.

(2) Corrective action(s) for the inspections required by paragraphs (8) and (10) of EASA AD 2017-0134R2 accomplished on a helicopter before the effective date of this AD, in accordance with Paragraph 3.B. and Appendix 4.A. of the Accomplishment Instructions of the applicable Airbus Helicopters service information specified in paragraphs (i)(2)(i) through (viii) of this AD, as applicable, are acceptable to comply with the requirements of paragraph (11) of EASA AD 2017-0134R2 for that helicopter, but only for the corrective actions for the inspections required by paragraphs (8) and (10) of EASA AD 2017-0134R2.

(i) Emergency Alert Service Bulletin AS332 ASB 05.01.07, Revision 2, dated October 7, 2016.

(ii) Emergency Alert Service Bulletin AS332 ASB 05.01.07, Revision 3, dated February 25, 2017.

(iii) Emergency Alert Service Bulletin AS332 ASB 05.01.07, Revision 4, dated March 17, 2017.

(iv) Emergency Alert Service Bulletin AS332 ASB 05.01.07, Revision 5, dated June 23, 2017.

(v) Emergency Alert Service Bulletin EC225 05A049, Revision 2, dated October 7, 2016.

(vi) Emergency Alert Service Bulletin EC225 05A049, Revision 3, dated February 25, 2017.

(vii) Emergency Alert Service Bulletin EC225 05A049, Revision 4, dated March 17, 2017.

(viii) Emergency Alert Service Bulletin EC225 05A049, Revision 5, dated June 23, 2017.

**(j) Special Flight Permit**

Special flight permits, as described in 14 CFR 21.197 and 21.199, are prohibited.

**(k) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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 International Validation

Branch, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

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

#### (l) Related Information

(1) For EASA AD 2017-1034R2, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet [www.easa.europa.eu](http://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, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817-222-5110. 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-2021-0379.

(2) For more information about this AD, contact Mahmood Shah, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817-222-5538; email *mahmood.g.shah@faa.gov*.

Issued on May 21, 2021.

**Gaetano A. Sciortino,**

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

[FR Doc. 2021-11376 Filed 5-28-21; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2021-0380; Project Identifier MCAI-2020-01683-R]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Helicopters Deutschland GmbH Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters. This proposed AD was prompted by a report that geometrical non-conformities were found in the root section of the tail rotor blade (TRB). This proposed AD would require a one-time inspection (dimensional check) of

the TRB for conformity and, depending on the findings, replacement of certain affected parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). This proposed AD would also prohibit rework, repair, or modification of affected parts in the affected area of the TRB assembly root. 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 July 16, 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 is proposed for IBR in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find this material on the EASA website at <https://ad.easa.europa.eu>. You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817-222-5110. It is also available in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0380.

#### 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-2021-0380; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Mail Stop: Room 410, Westbury, NY 11590; telephone (516) 228-7330; email *andrea.jimenez@faa.gov*. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

& Airworthiness Division, FAA, 1600 Stewart Ave., Mail Stop: Room 410, Westbury, NY 11590; telephone (516) 228-7330; email *andrea.jimenez@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-2021-0380.; Project Identifier MCAI-2020-01683-R” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposal.

#### 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, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Mail Stop: Room 410, Westbury, NY 11590; telephone (516) 228-7330; email *andrea.jimenez@faa.gov*. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

## Background

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020-0282, dated December 17, 2020 (EASA AD 2020-0282) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for Airbus Helicopters Deutschland GmbH Model EC135 P1, EC135 P2, EC135 P2+, EC135 P3, EC135 T1, EC135 T2, EC135 T2+, EC135 T3, EC635 P2+, EC635 P3, EC635 T1, EC635 T2+ and EC635 T3 helicopters, all variants, all serial numbers. Model EC635 P2+, EC635 P3, EC635 T1, EC635 T2+, and EC635 T3 helicopters are not certificated by the FAA and are not included on the U.S. type certificate data sheet, except where the U.S. type certificate data sheet explains that the Model EC635T2+ helicopter having serial number 0858 was converted from Model EC635T2+ to Model EC135T2+. This proposed AD, therefore, does not include Model EC635 P2+, EC635 P3, EC635 T1, EC635 T2+, and EC635 T3 helicopters in the applicability.

Furthermore, although EASA AD 2020-0282 applies to all Model EC135 P1, EC135 P2, EC135 P2+, EC135 P3, EC135 T1, EC135 T2, EC135 T2+, EC135 T3 helicopters, this proposed AD would apply to helicopters with an affected part installed instead.

This proposed AD was prompted by a report that during an investigation related to an accident on an Airbus Helicopters Model EC130B helicopter, geometrical non-conformities were observed in the TRB root section. EASA issued AD 2020-0187, dated August 21, 2020, to address this issue on Model EC130B and EC130T2 helicopters and the FAA issued a corresponding proposed AD, Docket No. FAA-2021-0145, Project Identifier MCAI-2020-01212-R (86 FR 14290, March 15, 2021). The Airbus Helicopters Deutschland GmbH Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3

helicopters have a similar design and production requirements to the affected Model EC 130B helicopter, and an inspection of the affected parts has detected geometrical non-conformities in some instances. The FAA is proposing this AD to address geometrical non-conformities in the TRB root section, which could lead to crack initiation and consequent blade failure, resulting in loss of control of the helicopter. See the MCAI for additional background information.

## FAA's Determination

These helicopters have been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the 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 after evaluating all the relevant information and determining the unsafe condition described previously is likely to exist or develop in other helicopters of these same type designs.

## Related Service Information Under 1 CFR Part 51

EASA AD 2020-0282 requires a one-time inspection (dimensional check) to verify TRB conformity, and, depending on findings, replacement of each affected part classified as Category B (non-compliant TRB assembly). EASA AD 2020-0282 also prohibits rework, repair or modification of affected parts in the critical section (affected area of the TRB assembly root).

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.

## Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2020-0282, described

previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed 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 2020-0282 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020-0282 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 2020-0282 that is required for compliance with EASA AD 2020-0282 will be available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0380 after the FAA final rule is

## Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 341 helicopters 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
4 work-hours × \$85 per hour = \$340 .....	\$0	\$340	\$115,940

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on

the results of any required actions. The FAA has no way of determining the

number of helicopters that might need these on-condition actions:

## ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
10 work-hours × \$85 per hour = \$850 .....	\$4,400	\$5,250

**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:

**Airbus Helicopters Deutschland GmbH:**

Docket No. FAA-2021-0380.; Project Identifier MCAI-2020-01683-R.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by July 16, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus Helicopters Deutschland GmbH Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters, certificated in any category, with any of the tail rotor blade (TRB) part numbers specified in paragraphs (c)(1) through (5) of this AD installed.

- (1) Part number (P/N) L642A2002101.
- (2) P/N L642A2002103.
- (3) P/N L642A2002104.
- (4) P/N L642A2002111.
- (5) P/N L642A2002112.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 6410, Tail Rotor Blades.

**(e) Unsafe Condition**

This AD was prompted by a report that during an investigation related to an accident on an Airbus Helicopters Model EC130B helicopter, geometrical non-conformities were observed in the TRB root section. The FAA is issuing this AD to address geometrical non-conformities in the TRB root section, which could lead to crack initiation and consequent blade failure, resulting in loss of control of the helicopter.

**(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 2020-0282, dated December 17, 2020 (EASA AD 2020-0282).

**(h) Exceptions to EASA AD 2020-0282**

(1) Where EASA AD 2020-0282 refers to its effective date, this AD requires using the effective date of this AD.

(2) The "Remarks" section of EASA AD 2020-0282 does not apply to this AD.

(3) Where the service information referred to in EASA AD 2020-0282 specifies to discard a certain part, this AD requires removing that parts from service.

(4) Where EASA AD 2020-0282 refers to flight hours (FH), this AD requires using hours time-in-service.

(5) Where the service information referred to in EASA AD 2020-0282 specifies to measure using the Smartphone application or the PowerPoint method, those methods of measurement are not required by this AD.

(6) Where the service information referred to in EASA AD 2020-0282 specifies to contact Airbus Helicopters if the measurement results cannot be confirmed, this AD requires determining the specified measurements but does not require contacting Airbus Helicopters for confirmation.

**(i) No Reporting Requirement**

Although the service information referred to in EASA AD 2020-0282 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(j) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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 International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

(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.

**(k) Related Information**

(1) For EASA AD 2020-0282, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://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, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817-222-5110. 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-2021-0380.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Mail Stop: Room 410, Westbury, NY 11590; telephone (516) 228-7330; email [andrea.jimenez@faa.gov](mailto:andrea.jimenez@faa.gov).

Issued on May 21, 2021.

**Lance T. Gant,**

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021-11187 Filed 5-28-21; 8:45 am]

BILLING CODE 4910-13-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2021-0249; FRL-10022-26-Region 9]

#### Rescission of Clean Data Determination and Call for Attainment Plan Revision for the Yuma, AZ 1987 PM<sub>10</sub> Moderate Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to rescind its previously issued clean data determination for the Yuma, Arizona “Moderate” nonattainment area for the 1987 24-hour national ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>) because recent complete, quality-assured monitoring data show that the area has subsequently violated this NAAQS. We are also proposing to find that the Arizona State Implementation Plan (SIP) is substantially inadequate to attain or maintain the PM<sub>10</sub> standard and to call for Arizona to revise the SIP to address this inadequacy.

**DATES:** Any comments must arrive by July 1, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0249 at <http://www.regulations.gov>. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any

information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. **FOR FURTHER INFORMATION CONTACT:** John J. Kelly, Air Planning Office (AIR-2), EPA Region IX, (415) 947-4151, [kelly.johnj@epa.gov](mailto:kelly.johnj@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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

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#### I. Background

##### A. The 1987 PM<sub>10</sub> NAAQS

The EPA sets NAAQS for certain ambient air pollutants at levels required to protect human health and the environment. The primary NAAQS represent ambient air quality standards the attainment and maintenance of which the EPA has determined are requisite to protect public health, including an adequate margin of safety. The secondary NAAQS represent ambient air quality standards the attainment and maintenance of which the EPA has determined are requisite to protect public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. PM<sub>10</sub> is one of these ambient air pollutants for which the

EPA has established NAAQS. On July 1, 1987, the EPA promulgated two primary standards for PM<sub>10</sub>: A 24-hour standard of 150 micrograms per cubic meter (µg/m<sup>3</sup>) and an annual PM<sub>10</sub> standard of 50 µg/m<sup>3</sup>. The EPA also promulgated secondary PM<sub>10</sub> standards that were identical to the primary standards.<sup>1</sup> Effective December 18, 2006, the EPA revoked the annual PM<sub>10</sub> NAAQS but retained the 24-hour PM<sub>10</sub> NAAQS.<sup>2</sup> Because they are identical, we refer to the primary and secondary 24-hour standards using the single term, NAAQS.

The 24-hour PM<sub>10</sub> NAAQS is attained when the expected number of exceedances, averaged over a three-year period, is less than or equal to one. The expected number of exceedances averaged over a three-year period at any given monitor is known as the PM<sub>10</sub> design value for that site. The PM<sub>10</sub> design value for the nonattainment area is the highest design value from a monitor within that area. The methodologies for calculating expected exceedances for the 24-hour PM<sub>10</sub> NAAQS are found in 40 CFR part 50, appendix K, Section 2.1(a).

#### B. Designation and Classification of the Yuma PM<sub>10</sub> Nonattainment Area

Upon enactment of the 1990 Amendments to the Clean Air Act (CAA or “Act”), the Act itself designated specific areas as nonattainment by operation of law, and classified these areas as Moderate.<sup>3</sup> These areas included all former Group I PM<sub>10</sub> planning areas identified in **Federal Register** documents published on August 7, 1987,<sup>4</sup> and October 31, 1990,<sup>5</sup> and any other areas violating the 1987 PM<sub>10</sub> NAAQS prior to January 1, 1989. The EPA published a **Federal Register** document announcing the areas designated nonattainment for PM<sub>10</sub> upon enactment of the 1990 CAA Amendments, known as “initial” PM<sub>10</sub> nonattainment areas, on March 15, 1991.<sup>6</sup> The EPA published a subsequent **Federal Register** document correcting some of these areas on August 8, 1991.<sup>7</sup> These nonattainment designations and Moderate area classifications were codified in 40 CFR part 81 on November 6, 1991.<sup>8</sup> The EPA designated as “unclassifiable” all other areas in the Nation not designated nonattainment

<sup>1</sup> 52 FR 24634 (July 1, 1987).

<sup>2</sup> 71 FR 61144 (October 17, 2006).

<sup>3</sup> 42 U.S.C. 7407(d)(4)(B), 7513(a).

<sup>4</sup> 52 FR 29383.

<sup>5</sup> 55 FR 45799.

<sup>6</sup> 56 FR 11101.

<sup>7</sup> 56 FR 37654.

<sup>8</sup> 56 FR 56694.

upon enactment of the 1990 CAA Amendments.<sup>9</sup>

The Yuma PM<sub>10</sub> nonattainment area (“Yuma NAA”) was one of the areas specified by Congress and designated by the 1990 CAA Amendments. Specifically, the Yuma NAA was designated nonattainment by section 107(d)(4)(B)(i) of the Act and classified as Moderate because it had been previously categorized as a Group I area.<sup>10</sup> The EPA announced the Yuma NAA designation, as required by section 107(d)(2) of the Act, on March 15, 1991.<sup>11</sup> In accordance with CAA section 189(a)(2), Arizona was required to submit a SIP revision meeting applicable nonattainment plan requirements by November 15, 1991, demonstrating attainment of the 1987 p.m.<sub>10</sub> NAAQS in the Yuma NAA by December 31, 1994.<sup>12</sup>

#### C. The Clean Data Policy and the 2006 Clean Data Determination

In nonattainment areas where monitored data demonstrate that the NAAQS has been attained, the EPA interprets certain requirements of the Act as no longer being applicable for so long as air quality continues to meet the NAAQS in the area. This interpretation is known as the “clean data policy,” and EPA findings issued under this policy are known as “clean data determinations.” On March 14, 2006, the EPA issued a clean data determination for the Yuma NAA for the 1987 24-hour PM<sub>10</sub> NAAQS, based on complete, quality-assured and certified PM<sub>10</sub> monitoring data for 2002–2004.<sup>13</sup> Because the data from 2002–2004 were complete and showed no exceedances of the relevant NAAQS, and because preliminary data for 2005 also indicated no such exceedances, the EPA concluded that the Yuma NAA was in attainment for the 1987 24-hour PM<sub>10</sub> NAAQS.<sup>14</sup> Based on this finding, the EPA determined that certain nonattainment plan requirements in the Yuma NAA were not applicable for so long as the Yuma NAA continued to

<sup>9</sup> See CAA section 107(d)(4)(B)(iii).

<sup>10</sup> 52 FR 29383 (August 7, 1987).

<sup>11</sup> 56 FR 11101.

<sup>12</sup> Arizona submitted a Moderate area plan for the Yuma NAA on November 14, 1991. The EPA found this plan to be incomplete on May 14, 1992. Arizona submitted a revised plan for the Yuma NAA on July 12, 1994, but withdrew this plan in 2006, following the EPA’s issuance of a clean data determination for the Yuma NAA.

<sup>13</sup> 71 FR 13021 (March 14, 2006).

<sup>14</sup> The clean data determination also applied to the annual PM<sub>10</sub> NAAQS, but that NAAQS was revoked later that year. See 71 FR 61144 (October 17, 2006).

monitor attainment of the 1987 24-hour PM<sub>10</sub> and annual NAAQS.<sup>15</sup>

#### II. Current Monitoring Data

In accordance with 40 CFR part 50, appendices J and K, a finding of whether an area has attained or is currently attaining the 1987 24-hour PM<sub>10</sub> NAAQS must generally be based upon certified, complete, quality-assured data gathered at monitoring sites in the nonattainment area and entered into the EPA’s Air Quality System (AQS) database. For the 1987 24-hour PM<sub>10</sub> NAAQS, appendix K provides that all data produced by state and local air monitoring sites (SLAMS) and other sites submitted to the EPA in accordance with the part 58 requirements be used for evaluating attainment.<sup>16</sup>

In order to assess whether an area is currently attaining the NAAQS, the PM<sub>10</sub> ambient air quality monitoring data collected by the state within the area for the three-year period must meet data completeness criteria, or otherwise unambiguously establish nonattainment according to 40 CFR part 50, appendix K, section 2.3. The ambient air quality monitoring data completeness requirements are met when quarterly data capture rates for all four quarters in a calendar year over a three-year period are at least 75 percent. For purposes of this proposal, we reviewed the data for the 2017–2019 period for completeness and determined that the PM<sub>10</sub> data met the completeness criterion for all 12 quarters at the Yuma Supersite PM<sub>10</sub> monitoring site in the Yuma NAA.<sup>17</sup>

The Arizona Department of Environmental Quality (ADEQ) is the governmental agency with the authority and responsibilities under the State’s laws for collecting ambient air quality data for the Yuma NAA. ADEQ submits annual monitoring network plans to the EPA.<sup>18</sup> These plans discuss the status of the ambient air monitoring network, as required under 40 CFR part 58. The EPA reviews these annual network plans for compliance with the applicable reporting requirements in 40 CFR 58.10. With respect to PM<sub>10</sub>, the EPA has

<sup>15</sup> In the same **Federal Register** document, the EPA also determined pursuant to CAA sections 179(c)(1) and 188(b)(2) that the Yuma NAA had attained the NAAQS by the Moderate area attainment date of December 31, 1994. Because that determination was tied to that specific attainment date, it would not be affected by the rescission of the clean data determination proposed in this action.

<sup>16</sup> 40 CFR part 50, appendix K, section 2.3(a).

<sup>17</sup> EPA, AQS “Design Value Report,” dated March 31, 2021. This report is included in the docket.

<sup>18</sup> See, e.g., “State of Arizona Air Monitoring Network Plan for the Year 2020.” Copies of Arizona’s Annual Network Plans for 2018–2020 are included in the docket.

found that the 2018–2020 annual network plans submitted by ADEQ, which reflect the network during the 2017–2019 design value period, met the applicable requirements under 40 CFR part 58.<sup>19</sup> Furthermore, we concluded from our 2018 technical systems audit of ADEQ’s ambient air quality monitoring program that the ambient air monitoring network currently meets or exceeds the requirements for the minimum number of monitoring sites designated as SLAMS for PM<sub>10</sub> in the Yuma NAA.<sup>20</sup> ADEQ certifies annually that the data it submits to AQS are quality-assured and has done so for each year relevant to our proposed action, 2017–2019.<sup>21</sup>

Table 1 provides the 2019 p.m.<sub>10</sub> design value for the Yuma Supersite, the sole regulatory monitoring site measuring ambient PM<sub>10</sub> within the Yuma NAA, expressed as a single value representing the average expected annual exceedances over the three-year period, 2017–2019. The PM<sub>10</sub> data show that the design value is greater than 1.0 estimated annual average exceedances of the 1987 24-hour PM<sub>10</sub> NAAQS. Consequently, the EPA proposes to determine, based upon three years of complete, quality-assured and certified data from 2017–2019, that the Yuma NAA is no longer attaining the 1987 24-hour PM<sub>10</sub> NAAQS.

TABLE 1—2017–2019 DESIGN VALUE FOR THE 1987 24-HOUR PM<sub>10</sub> NAAQS FOR THE YUMA NAA

Monitoring site	AQS identification No.	Design value
Yuma Supersite .....	04-027-8011	5.7

Source: EPA, AQS “Design Value Report,” dated March 31, 2021, 15.

We have also reviewed preliminary 2020 data, which indicate that the Yuma NAA had a 2018–2020 design value of 5.4.<sup>22</sup> This preliminary design value

<sup>19</sup> See, e.g., letter dated November 8, 2019, from Gwen Yoshimura, Manager, EPA Region IX, Air Quality Analysis Office, to Daniel Czecholinski, Acting Director, Air Quality Division, ADEQ. Copies of EPA letters responding to Arizona’s Annual Network Plans for 2018–2020 are included in the docket.

<sup>20</sup> Letter dated April 25, 2019, from Elizabeth Adams, Director, EPA Region 9 Air Division to Timothy Franquist, Director, Air Quality Division, ADEQ, enclosure titled “Technical Systems Audit of the Ambient Air Monitoring Program: Arizona Department of Environmental Quality, April 2–April 6, 2018,” Network Requirements section, 8.

<sup>21</sup> See, e.g., letter dated April 13, 2020, from Daniel Czecholinski, Director, Air Quality Division, ADEQ, to Gwen Yoshimura, Manager, EPA Region IX, Air Quality Analysis Office. Copies of ADEQ certifications and their respective transmittal letters for years 2017–2019 are included in the docket.

<sup>22</sup> EPA, AQS “Design Value Report,” dated March 3, 2021.

also does not show attainment of the 1987 24-hour PM<sub>10</sub> NAAQS and is therefore consistent with the proposed determination. We also reviewed preliminary data from the Yuma Supersite monitor for 2021, which is not a full year of data.<sup>23</sup> As of March 31, 2021, there were no exceedances in 2021. We note, however, that even with no exceedances in 2021, given the number of expected exceedances in the certified year 2019, plus those in the preliminary year 2020, the 2021 three-year preliminary design value violates the NAAQS and is therefore also consistent with our proposed determination.

### III. Proposed Action and Request for Public Comment

Based on our proposed determination that the Yuma NAA is no longer attaining the 1987 24-hour PM<sub>10</sub> NAAQS, we propose to rescind the clean data determination for the Yuma NAA and reinstate the requirements that were suspended under that determination. We anticipate that Arizona's submission of a new, approvable Moderate nonattainment plan in response to the "SIP call" discussed below would satisfy these obligations.

In addition, we propose to find, pursuant to CAA section 110(k)(5), that the Arizona SIP is substantially inadequate to attain or maintain the 1987 24-hour PM<sub>10</sub> NAAQS in the Yuma NAA. This proposed finding is based both on the most recent monitoring data discussed in section II of this document, as well as longer-term air quality trends in the Yuma NAA. In particular, we note that the Yuma NAA has had a violating design value for the 1987 24-hour PM<sub>10</sub> NAAQSs every year since issuance of the clean data determination in 2006.<sup>24</sup> Collectively, these recent and longer term monitoring data indicate that the current Arizona SIP is substantially inadequate to attain or maintain the 1987 24-hour PM<sub>10</sub> NAAQS in the Yuma NAA.

In order to address this inadequacy, we propose to issue a SIP call under CAA section 110(k)(5), requiring the State to submit a SIP revision establishing that the Yuma NAA meets the applicable nonattainment plan requirements of the CAA for Moderate PM<sub>10</sub> NAAAs.<sup>25</sup> These requirements

include: (i) An approved permit program for construction of new and modified major stationary sources;<sup>26</sup> (ii) a demonstration that the plan provides for attainment by no later than the applicable Moderate area attainment date or a demonstration that attainment by that date is impracticable;<sup>27</sup> (iii) provisions for the implementation of reasonably available control measures (RACM) and reasonably available control technology (RACT);<sup>28</sup> (iv) quantitative milestones that will be used to evaluate compliance with the requirement to demonstrate reasonable further progress (RFP);<sup>29</sup> (v) evaluation and regulation of PM<sub>10</sub> precursors;<sup>30</sup> (vi) a description of the expected annual incremental reductions in emissions that will demonstrate RFP;<sup>31</sup> (vii) emissions inventories, as necessary;<sup>32</sup> (viii) other control measures besides RACM and RACT as may be needed for attainment;<sup>33</sup> (ix) contingency measures,<sup>34</sup> and (x) a motor vehicle emissions budget for the purpose of determining the conformity of transportation programs and plans developed by state transportation agencies.<sup>35</sup> The EPA's longstanding guidance on these statutory requirements is embodied in the "The General Preamble for Implementation of Title I of the Clean Air Act (CAA) Amendments."<sup>36</sup>

We propose to require Arizona to submit this Moderate nonattainment plan SIP submission within 18 months of finalizing the SIP call, which is the maximum time permitted under CAA 110(k)(5). This is longer than the original Moderate nonattainment plan submittal deadline of one year from the date of the 1990 CAA Amendments under CAA 189(a)(2)(A), but is in line with the deadline specified in CAA 189(a)(2)(B) for other PM nonattainment

areas.<sup>37</sup> Similarly, because the original maximum attainment date for this area was December 31, 1994 (approximately four years from the original designation),<sup>38</sup> we propose, pursuant to CAA 110(k)(5), that the new attainment date shall be as expeditious as practicable, but no later than December 31, 2025.<sup>39</sup> In line with this proposed attainment date, we propose to require implementation of RACM/RACT by no later than January 1, 2025.<sup>40</sup> Lastly, in the event we finalize the above proposals, we propose to reverse our previous budget adequacy finding to a finding of inadequacy pursuant to 40 CFR 93.118(f)(1)(vi).

The EPA is soliciting public comments on the issues discussed in this document. We will accept comments from the public on this proposal until the date listed in the **DATES** section above. We will consider these comments before taking final action.

### IV. Statutory and Executive Order Reviews

This action proposes a determination that the Yuma NAA is no longer attaining the 1987 PM<sub>10</sub> NAAQS, based on the EPA's review of air quality data, and a SIP call under section 110(k)(5) of the CAA. Upon a finding that a SIP is deficient, section 110(k)(5) of the CAA directs the Agency to require the state to correct the deficiency. Therefore, this action does not impose additional requirements beyond those required by the CAA itself. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions

<sup>26</sup> CAA section 189(a)(1)(A).

<sup>27</sup> CAA section 189(a)(1)(B).

<sup>28</sup> CAA section 189(a)(1)(C).

<sup>29</sup> CAA section 189(c).

<sup>30</sup> CAA section 189(e).

<sup>31</sup> CAA section 172(c)(2).

<sup>32</sup> CAA section 172(c)(3).

<sup>33</sup> CAA section 172(c)(6).

<sup>34</sup> CAA section 172(c)(9).

<sup>35</sup> 40 CFR 93.102(b)(1). Effective June 27, 2007 (see 72 FR 32295, June 12, 2007), the EPA found adequate for transportation conformity purposes the motor vehicle emissions budgets in the Yuma PM<sub>10</sub> Maintenance Plan (August 2006). However, if we take final action to withdraw the clean data determination and issue a SIP call, we expect also to reverse our previous finding to a finding of inadequacy pursuant to 40 CFR 93.118(f)(1)(vi). Our inadequacy finding for the motor vehicle emissions budget would require transportation agencies to determine conformity using interim emission tests pursuant to 40 CFR 93.119, instead of the current practice of using the past maintenance plan motor vehicle emissions budgets as part of a budgets test.

<sup>36</sup> 57 FR 13498 (April 16, 1992).

<sup>37</sup> CAA section 189(a)(2).

<sup>38</sup> CAA section 188(c)(1).

<sup>39</sup> CAA section 110(k)(5). "the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D of this subchapter, unless such date has elapsed)."

<sup>40</sup> Given that exceedances of the 1987 24-hour PM<sub>10</sub> NAAQS in the Yuma NAA are often associated with high wind that could potentially qualify for treatment as "natural events" under the EPA's Exceptional Events Rule, we recommend RACM/RACT be fully implemented as early as January 1, 2023, so that anthropogenic sources would be reasonably controlled during the three-year period preceding the proposed attainment date. See, e.g., 40 CFR 50.14(b)(5)(ii) ("The Administrator will consider high wind dust events to be natural events in cases where windblown dust is entirely from natural undisturbed lands in the area or where all anthropogenic sources are reasonably controlled . . .").

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> See CAA section 110(k)(5) ("Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made . . .").

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

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

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

In addition, this proposed action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes and thus this proposed action will not impose substantial direct costs on Tribal governments or preempt Tribal law. Nonetheless, the EPA intends to notify the Cocopah and Fort Yuma (Quechan) tribes, which have lands within the Yuma NAA.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate Matter, Pollution.

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

Dated: May 24, 2021.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2021-11395 Filed 5-28-21; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2021-0017; FRL-10023-69-Region 3]

#### Air Plan Approval; Maryland; Baltimore Area Base Year Inventory for the 2015 Ozone National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Maryland. This revision consists of the base year inventory for the Baltimore, Maryland marginal nonattainment area (Baltimore Area) for the 2015 ozone national ambient air quality standards (NAAQS). This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before July 1, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2021-0017 at <https://www.regulations.gov>, or via email to [David.Talley@epa.gov](mailto:David.Talley@epa.gov). For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment.

The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Serena Nichols, Planning & Implementation Branch (3AD30), Air &

Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2053. Ms. Nichols can also be reached via electronic mail at [Nichols.Serena@epa.gov](mailto:Nichols.Serena@epa.gov).

**SUPPLEMENTARY INFORMATION:** On July 30, 2020, the Maryland Department of the Environment (MDE), on behalf of the State of Maryland, submitted a revision to the Maryland SIP entitled, “2015 8-Hour Ozone NAAQS (0.070 ppm) Marginal Area State Implementation Plan for the Baltimore, MD Nonattainment Area, SIP #20-08.” This SIP revision, referred to in this rulemaking action as the “Baltimore base year inventory SIP,” addresses the base year inventory requirement for the 2015 ozone NAAQS.

#### I. Background

On October 1, 2015, EPA strengthened the 8-hour ozone NAAQS, lowering the level of the NAAQS from 0.075 ppm parts per million (ppm) to 0.070 ppm. 80 FR 65292 (October 26, 2015).

Effective August 3, 2018, EPA designated the Baltimore Area, consisting of Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties and the City of Baltimore, all in Maryland, as marginal nonattainment for the 2015 ozone NAAQS. 83 FR 25776 (June 4, 2018). CAA section 182(a)(1) requires ozone nonattainment areas classified as marginal or above to submit a comprehensive, accurate, current inventory of actual emissions from all emissions sources in the nonattainment area, known as a “base year inventory.” The Baltimore base year inventory SIP addresses a base year inventory requirement for the Baltimore Area.

#### II. Summary of SIP Revision and EPA Analysis

##### A. EPA’s Evaluation of the Baltimore Base Year Inventory SIP

EPA’s review of Maryland’s base year inventory SIP for the Baltimore Area indicates that it meets the base year inventory requirements for the 2015 ozone NAAQS. As required by 40 CFR 51.1315(a), MDE selected 2017 for the base year inventory, which is consistent with the baseline year for the reasonable further progress (RFP) plan because it is the year of the most recent triennial inventory. MDE included actual ozone season emissions, pursuant to 40 CFR 51.1315(c).

EPA prepared a Technical Support Document (TSD) in support of this rulemaking. In that TSD, EPA reviewed the results, procedures, and

methodologies for the SIP base year, and found them to be acceptable and developed in accordance with EPA's technical guidance. The TSD is available online at <http://www.regulations.gov>, Docket ID No. EPA-R03-OAR-2021-0017.

#### B. Base Year Inventory Requirements

In EPA's December 6, 2018 (83 FR 62998) rule, "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements," known as the "SIP Requirements Rule," EPA set out nonattainment area requirements for the 2015 ozone NAAQS. The SIP Requirements Rule established base year inventory requirement, which were codified at 40 CFR 51.1315. As required by 40 CFR 51.1315(a), each 2015 ozone nonattainment area to submit a base year inventory within 2 years of designation, *i.e.*, by no later than August 3, 2020.

Also, 40 CFR 51.1315(a) requires that the inventory year be selected consistent with the baseline year for the RFP plan as required by 40 CFR 51.1310(b), which states that the baseline emissions inventory shall be the emissions inventory for the most recent calendar year for which a complete triennial inventory is required to be submitted to EPA under the provisions of subpart A of 40 CFR 51, Air Emissions Reporting Requirements, 40 CFR 51.1–50. The most recent triennial inventory year conducted for the National Emissions Inventory (NEI) pursuant to the Air Emissions Reporting Requirements (AERR) rule is 2017. 73 FR 76539 (December 17, 2008). Maryland selected 2017 as their baseline emissions inventory year for RFP. This selection comports with EPA's implementation regulations for the 2015 ozone NAAQS because 2017 is the inventory year. 40 CFR 51.1310(b).<sup>1</sup> Further, 40 CFR 51.1315(c) requires emissions values included in the base year inventory to be actual ozone season day emissions as defined by 40 CFR 51.1300(q), which states: Ozone season day emissions means an average day's emissions for a typical ozone season work weekday. The state shall select, subject to EPA approval, the particular month(s) in the ozone season and the day(s) in the work

<sup>1</sup> On January 29, 2021, the Court of Appeals for the D.C. Circuit issued its decision regarding multiple challenges to EPA's implementation rule for the 2015 ozone NAAQS which included, among other things, upholding this provision allowing states to use an alternative baseline year for RFP. *Sierra Club v. EPA*, No. 15-1465 (D.C. Cir.) (mandate not yet issued). The other provisions of EPA's ozone implementation rule at issue in the case are not relevant for this rulemaking.

week to be represented, considering the conditions assumed in the development of RFP plans and/or emissions budgets for transportation conformity.

#### C. Baltimore Base Year Inventory SIP

The Baltimore base year inventory SIP contains an explanation of MDE's 2017 base year emissions inventory for Baltimore (2017 Baltimore BYE) for stationary, non-point, non-road, and on-road anthropogenic sources, as well as biogenic sources, in the Baltimore Area. MDE estimated anthropogenic emissions for volatile organic compound (VOC), nitrogen oxide (NO<sub>x</sub>), and carbon monoxide (CO) for a typical ozone season workweek day.

MDE developed the 2017 Baltimore BYE with the following source categories of anthropogenic emissions sources: Point, quasi-point, non-point, non-road, on-road, biogenic, and commercial marine vessels, airport, and railroad emissions sources (MAR). Appendix A of the Baltimore base year inventory SIP, 2017 Base Year SIP Emissions Inventory Methodologies (Appendix A), sets out the methodologies MDE used to develop its base year inventory.<sup>2</sup>

#### 1. Point Sources

Point sources are larger sources that are located at a fixed, stationary location. As defined by the AERR in 40 CFR 51.50, point sources are large, stationary (non-mobile), identifiable sources of emissions that release pollutants into the atmosphere. A point source is a facility that is a major source under 40 CFR part 70 for one or more of the pollutants for which reporting is required by 40 CFR 51.15 (a)(1). These point sources can be associated with a single point or group of points in space. Examples of point source emissions categories include power plants, industrial boilers, petroleum refineries, cement plants, and other industrial plants.

As stated in Appendix A, for the 2017 Baltimore BYE, MDE defined a point source located within a designated ozone nonattainment area as a stationary commercial or industrial facility that operations and emits more than 10 tons per year (tpy) of VOC; or 25 tons per year of NO<sub>x</sub>; or a 100 tpy of CO, sulfur oxides (SO<sub>x</sub>), particulate matter with an aerodynamic diameter

<sup>2</sup> The Appendix A—2017 Base Year SIP Emission Inventory Methodologies, submitted with the 2015 8-Hour Ozone NAAQS Marginal Area State Implementation Plan for the Baltimore, MD Nonattainment Area is included in the docket for this rulemaking available online at <https://www.regulations.gov>, Docket ID: EPA-R03-OAR-2021-0017.

less than 10 micrometers (PM<sub>10</sub>), diameter less than 2.5 micrometers (PM<sub>2.5</sub>), and total suspended particulates (TSP).

In Appendix A, MDE explains that it used several methods of source identification to ensure the point source inventory is as complete as possible. MDE's primary data source is its permitting program. MDE's compliance program identifies other point sources through facility inspections and investigations. In addition, facilities are required by Maryland's emissions statement regulations, Code of Maryland Regulations (COMAR) 26.11.01.05-1 and 26.11.02.19D to certify the air emissions for the past calendar year. The certified emissions are used for inventory and planning purposes.

MDE's Air and Radiation Management Administration (ARMA) developed the point source data for the 2017 base year inventory. The point source inventory contains emissions for electric generating units (EGU) and Non-EGU sources in the nonattainment area (NAA). EPA guidance for emissions inventory development provides that ozone season day emissions are used for the base year inventory for the NAA. ARMA developed their 2017 inventory by using emissions directly reported to the agency by facilities as required by Maryland air quality regulations. These emissions are also reported to EPA, and after going through EPA's quality assurance (QA) and quality control (QC) process, are included in EPA's National Emissions Inventory (NEI). The emissions for this base year can be found in EPA's 2017 NEI.<sup>3</sup>

#### 2. Quasi-Point Sources

MDE defines quasi-point sources as that are generally considered part of the non-point or non-road emissions sectors but are included in the point source emissions inventory for a particular reason. In Appendix A, MDE states that such reasons include Federal guidance, as in the case of certain airports, or to facilitate future general conformity determinations, as in the case of military bases, ports, and other similar facilities. EPA has reviewed the source categories included in the quasi-point sources and has found this to be a reasonable approach to handle these sources.

<sup>3</sup> The TSD for the Base Year Inventory Submitted with the 2015 8-Hour Ozone NAAQS Marginal Area State Implementation Plan for the Baltimore, MD Nonattainment Area, included in the docket for this rulemaking available online at <https://www.regulations.gov>, Docket ID: EPA-R03-OAR-2021-0017.

### 3. Non-Point Sources

Non-point sources are also called “area sources.” These sources collectively represent individual sources of emissions that have not been inventoried as specific point or mobile sources. These individual sources treated collectively as non-point sources are typically too small, numerous, or difficult to inventory using the methods for the other classes of sources.

Non-point sources that MDE evaluated for the 2017 Baltimore BYE include petroleum distribution losses (e.g., tank truck unloading and auto refueling), stationary source solvent application (e.g., dry cleaners, auto refinishing), bioprocess emissions sources (bakeries, breweries, wineries, distilleries), catastrophic/accidental releases (e.g., oil spills), solid waste disposal treatment, and recovery (e.g., open burning), small stationary source fossil fuel use (e.g., small utility boilers), fugitive sources (e.g., construction activity and unpaved roads), fire sources (e.g., agricultural burning and vehicle fires), and ammonia sources (e.g., agricultural livestock production operations). Appendix A sets out the methodologies MDE used to estimate emissions for each of these non-point source categories. These methods are consistent with the most recent EPA emission inventory guidance.

### 4. Non-Road Mobile Sources

Non-road mobile sources are also called “off-highway” mobile sources. These are defined as a non-road engine or non-road vehicle. As per 40 CFR 51.50, a non-road engine is an internal combustion engine (including the fuel system) that is not used in an on-road motor vehicle or a vehicle used solely for competition, or that is not affected by sections 111 or 202 of the CAA. Also defined by 40 CFR 51.50, a non-road vehicle (rather than engine) is a vehicle that is run by a non-road engine and that is not an on-road motor vehicle or a vehicle used solely for competition. Examples of non-road mobile sources include airport ground support equipment, agricultural and construction equipment powered by an internal combustion engine, and lawn and garden engines and equipment.

As explained in Appendix A, consistent with EPA’s Emission Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations, MDE used the most current version of EPA’s NONROAD2008a model, which is incorporated into EPA’s Motor Vehicle Emission Simulator (MOVES) model, specifically MOVES2014a, to develop

the inventory for non-road mobile sources. The NONROAD2008a model includes more than 80 basic and 260 specific types of non-road equipment and further stratifies equipment types by horsepower rating. Fuel types include gasoline, diesel, compressed natural gas (CNG), and liquefied petroleum gas (LPG).

### 5. Marine Vessels, Airport, Railroad Locomotives (MAR) Sources

MAR is a non-road sub-category. MDE states in its Baltimore base year inventory SIP that, for MAR sources, MDE calculated emissions by collecting data directly from surveyed sources, or activity from state and federal reporting agencies. To develop the commercial marine vehicle emissions for the base year, Maryland used EPA’s 2016 beta modeling platform. This platform was used because it provided the most recent descriptions and methodologies for calculation of marine vessel emissions. To estimate emissions for aircraft, Maryland used airport activity statistics from the Federal Aviation Administration (FAA), landing and takeoff cycle information from the Maryland Aviation Administration, and statewide survey information for landing and takeoffs, engine type, location, and usage data. Railroad emission estimates were developed using activity and fuel consumption estimates collected from the rail companies and proportioned to each county by the amount of track miles each company utilized in a county. MDE applied EPA emission factors using EPA guidance and methodologies or the best engineering method. These methods of calculating emissions are consistent with the most recent EPA emission inventory guidance.<sup>4</sup> Details of the development of emissions for these sources along with other non-road model sources are provided in Appendix A of Maryland’s July 30, 2020 submittal.

### 6. On-Road Mobile Sources

On-road mobile sources are also called “highway mobile sources.” These sources are the motor vehicles (e.g., automobiles, buses, trucks) traveling on local and highway roads. On-road mobile sources should be estimated by the latest recommended on-road mobile source models. Currently, that means

EPA’s MOVES model for all states but California.

In addition to emissions from vehicles’ exhaust, the MOVES model estimates evaporative emissions for mobile sources, which must be included in the inventory. Volatile hydrocarbons evaporate from the fuel system while a vehicle is refueling, parked, or driving. Evaporative processes differ from exhaust emissions because they don’t directly involve combustion, which is the main process driving exhaust emissions.

As stated in Appendix A, MDE used EPA’s MOVES2014a model to estimate the 2017 annual emissions as well as 2017 daily emissions from on-road vehicles and total energy consumption in Maryland. Emissions were estimated based on emission factors and vehicle activity. Emission factors for vehicles were based on vehicle type such as passenger cars, passenger trucks, vehicle age and the vehicle’s operating modes. Operating modes for running, start, and idle emissions are included in MOVES. The emission factors varied over a range of conditions, such as the ambient air temperature, speed, traffic conditions, road types, road topography, etc. The generated emission factors were then multiplied by the appropriate vehicle miles traveled (VMT) to estimate emission.

In order to estimate both the rate at which emissions are being generated and to calculate VMT, MDE examined its road network and fleet to estimate vehicle activity. For the annual inventories, this was done for each of the twelve months in 2017 and aggregated for the entire year. MDE used computer models to perform these calculations by simulating the travel of vehicles on the Maryland’s roadway system.

EPA has reviewed the results, procedures, and methodologies for the SIP base year, as well as comparing the inventory with previously QA/QC’d data in EPA’s 2017 NEI for any data discrepancies and found none. EPA has therefore determined the base year inventory to be acceptable and developed in accordance with EPA’s technical guidance.

### 7. Biogenic Emissions

MDE also inventoried biogenic emissions, which are not included in the anthropogenic total. Biogenic emissions come from natural sources, including vegetation, soils, volcanic emissions, lightning, and sea salt. They need to be accounted for in photochemical grid models, as most types are widespread and ubiquitous contributors to background formation of

<sup>4</sup> Emission Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations, Page 130, included in the docket for this rulemaking available online at <https://www.regulations.gov>, Docket ID: EPA-R03-OAR-2021-0017 PG 130.

ozone. However, they are not included in the RFP baseline.

Biogenic emissions are typically computed using a model which utilizes spatial information on vegetation and land use and environmental conditions of temperature and solar radiation. The model inputs are typically horizontally allocated (gridded) data, and the outputs are gridded biogenic emissions which can then be speciated and utilized as input to photochemical grid models. In Appendix A, MDE explains that it used the data files created and made available

by EPA. MDE computed biogenic emissions with a modified version of EPA's Biogenic Emission Inventory System (BEIS) model that utilized county land use data from EPA's land use inventory and temperature and cloud cover data from the National Weather Service. This method is acceptable under EPA's emission inventory guidance.<sup>5</sup>

#### 8. Emissions Summary

The Baltimore base year inventory SIP contains a summary of 2017 ozone season day emissions by source

category, which is presented in Table 1 of this document. Tables 2 through 7 of this document present the 2017 Baltimore BYE by source category and county. In the Baltimore base year inventory SIP, MDE notes that the biogenic emissions in Table 1 are taken from EPA's NEI 2014 database. Total biogenic emissions for July 2014 were divided by 31 days to develop average ozone season day emissions for each jurisdiction in the Baltimore Area and then added together to develop the Baltimore Area total.

TABLE 1—2017 BALTIMORE BYE SUMMARY

[Tons per ozone season day]

Source category	VOC	NO <sub>x</sub>	CO
Point .....	5.729	47.530	18.902
Quasi-Point .....	1.310	7.274	6.549
Non-Point .....	72.233	10.931	26.954
Non-Road .....	21.314	13.164	330.888
MAR .....	0.930	7.440	3.848
On-Road Mobile .....	25.860	53.720	365.010
Anthropogenic Total .....	127.379	140.060	752.152
Biogenic .....	227.640	2.740	24.550

TABLE 2—2017 BALTIMORE BYE POINT SOURCE EMISSIONS

[Tons per ozone season day]

County name	VOC	NO <sub>x</sub>	CO
Anne Arundel County .....	0.885	13.079	5.523
Baltimore County .....	0.876	11.531	2.788
Carroll County .....	0.390	8.342	5.568
Harford County .....	0.471	3.110	0.422
Howard County .....	1.036	1.266	0.920
Baltimore City .....	2.070	10.202	3.682
Baltimore Area Total .....	5.729	47.530	18.900

TABLE 3—2017 BALTIMORE BYE QUASI-POINT SOURCE EMISSIONS

[Tons per ozone season day]

County name	VOC	NO <sub>x</sub>	CO
Anne Arundel County .....	0.793	4.009	4.554
Baltimore County .....	0.451	2.451	1.634
Carroll County .....	0.066	0.815	0.361
Baltimore City .....	1.310	7.274	6.549
Baltimore Area Total .....			

TABLE 4—2017 BALTIMORE BYE NON-POINT SOURCE EMISSIONS

[Tons per ozone season day]

County name	VOC	NO <sub>x</sub>	CO
Anne Arundel County .....	16.532	2.090	2.836
Baltimore County .....	20.168	3.200	4.206
Carroll County .....	4.810	0.595	2.922

<sup>5</sup> Emission Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS)

and Regional Haze Regulations, Page 100, included in the docket for this rulemaking available online

at <https://www.regulations.gov>, Docket ID: EPA-R03-OAR-2021-0017 PG 130.

TABLE 4—2017 BALTIMORE BYE NON-POINT SOURCE EMISSIONS—Continued  
[Tons per ozone season day]

County name	VOC	NO <sub>x</sub>	CO
Harford County .....	9.111	1.007	12.685
Howard County .....	7.745	1.375	1.617
Baltimore City .....	13.867	2.665	2.689
Baltimore Area Total .....	72.233	10.931	26.954

TABLE 5—2017 BALTIMORE BYE NON-ROAD SOURCE EMISSIONS  
[Tons per ozone season day]

County name	VOC	NO <sub>x</sub>	CO
Anne Arundel County .....	5.818	3.263	80.901
Baltimore County .....	6.421	4.725	102.577
Carroll County .....	1.572	0.980	26.043
Harford County .....	2.645	1.590	30.234
Howard County .....	2.712	1.500	53.191
Baltimore City .....	2.145	1.107	37.943
Baltimore Area Total .....	21.314	13.164	330.888

TABLE 6—2017 BALTIMORE BYE MAR SOURCE EMISSIONS  
[Tons per ozone season day]

County name	VOC	NO <sub>x</sub>	CO
Anne Arundel County .....	0.113	1.623	0.776
Baltimore County .....	0.634	2.277	1.833
Carroll County .....	0.027	0.188	0.497
Harford County .....	0.031	0.469	0.321
Howard County .....	0.013	0.302	0.075
Baltimore City* .....	0.112	2.582	0.348
Baltimore Area Total .....	0.930	7.440	3.848

\* Emissions from marine vessels at the Port of Baltimore are included here.

TABLE 7—2017 BALTIMORE BYE MOBILE SOURCE EMISSIONS  
[Tons per ozone season day]

County name	VOC	NO <sub>x</sub>	CO
Anne Arundel County .....	6.17	12.33	85.88
Baltimore County .....	8.12	17.72	117.58
Carroll County .....	2.13	3.10	21.86
Harford County .....	2.73	5.26	35.31
Howard County .....	3.12	8.21	54.20
Baltimore City .....	3.60	7.10	50.18
Baltimore Area Total .....	25.86	53.72	365.01

### III. Proposed Action

EPA's review of this material indicates the Baltimore base year inventory SIP meets the base year inventory requirement for the 2015 ozone NAAQS for the Baltimore Area. Therefore, EPA is proposing to approve the Baltimore base year inventory SIP, which was submitted on July 30, 2020. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### IV. Statutory and Executive Order Reviews

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

those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking, proposing to approve Maryland's base year inventory SIP for the 2015 ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

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

Dated: May 19, 2021.

**Diana Esher,**  
*Acting Regional Administrator, Region III.*  
[FR Doc. 2021-11441 Filed 5-28-21; 8:45 am]  
**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[EPA-R09-OAR-2021-0333; FRL-10023-88-Region 9]

#### Air Plan Limited Approval and Limited Disapproval, California; Mojave Desert Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of revisions to the Mojave Desert Air Quality Management District's (MDAQMD or District) portion of the California State Implementation Plan (SIP). This revision concerns oxides of nitrogen (NO<sub>x</sub>) emissions from stationary internal combustion engines. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Comments must be received on or before July 1, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0333 at <http://www.regulations.gov>. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

#### FOR FURTHER INFORMATION CONTACT:

Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3073 or by email at [gong.kevin@epa.gov](mailto:gong.kevin@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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

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- I. The State's Submittal
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- IV. Statutory and Executive Order Reviews

#### I. The State's Submittal

- A. *What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the MDAQMD and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULE

Rule No.	Rule title	Amended	Submitted
1160 .....	Internal Combustion Engines .....	01/22/2018	05/23/2018

On November 23, 2018 the submittal for MDAQMD Rule 1160 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51

Appendix V, which must be met before formal EPA review.

- B. *Are there other versions of this rule?*

We approved an earlier version of Rule 1160 into the SIP on November 1, 1996 (61 FR 56470).

*C. What is the purpose of the submitted rule revision?*

Emissions of NO<sub>x</sub> contribute to the production of ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO<sub>x</sub> emissions. Rule 1160 regulates NO<sub>x</sub> emissions from stationary internal combustion engines. In the District's reasonably available control technology (RACT) SIP for the 2008 National Ambient Air Quality Standards (NAAQS), the District concluded that Rule 1160 did not meet current RACT and acknowledged the need to revise the rule, primarily the limits for NO<sub>x</sub>, in order to implement RACT.<sup>1</sup> The submitted rule revisions are intended to strengthen the rule by, among other things, strengthening the NO<sub>x</sub> limits in the rule, in order to implement current RACT. The EPA's technical support document (TSD) has more information about this rule.

**II. The EPA's Evaluation and Action**

*A. How is the EPA evaluating the rule?*

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require RACT for each major source of NO<sub>x</sub> in ozone nonattainment areas classified as moderate or above (see CAA sections 182(b)(2) and 182(f)). The MDAQMD regulates an ozone nonattainment area classified as Severe-15 for the 2008 8-hour ozone NAAQS and the 2015 8-hour ozone NAAQS (40 CFR 81.305), and Rule 1160 regulates multiple major sources of NO<sub>x</sub> in the nonattainment area. Therefore, this rule must implement RACT.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency

<sup>1</sup> The EPA conditionally approved the District's RACT SIPs for major NO<sub>x</sub> sources, based on the District's commitment to remedy deficiencies in a set of different NO<sub>x</sub> rules, including Rule 1160. 83 FR 5921 (February 12, 2018). The District has also submitted revisions to the other NO<sub>x</sub> rules subject to the conditional approval. Because the EPA has not yet acted on these other rules, we intend to address our conditional approval of the major NO<sub>x</sub> RACT source category in a separate rulemaking once we have taken action on all of the applicable NO<sub>x</sub> rules.

requirements for the applicable criteria pollutants include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
3. "Improving Air Quality with Economic Incentive Programs" (EPA-452/R-01-001, January 2001).
4. Alternative Control Techniques Document—NO<sub>x</sub> Emissions from Stationary Reciprocating Internal Combustion Engines" (EPA-453/R-93-032, July 1993).

*B. Does the rule meet the evaluation criteria?*

Rule 1160 improves the SIP by establishing more stringent NO<sub>x</sub> emission limits and by clarifying monitoring, recording and recordkeeping provisions. The revised rule also requires an additional ten percent reduction in allowed emissions for facilities opting to use emissions aggregation as part of an economic incentive program (EIP), consistent with the EPA's guidance on such provisions. The rule is largely consistent with CAA requirements and relevant guidance regarding enforceability, and RACT, except for the provisions described below. The rule is also consistent with the EPA's requirements on SIP revisions, except for the provisions described below. Rule provisions that do not meet the evaluation criteria are summarized below and discussed further in the TSD.

*C. What are the rule deficiencies?*

These provisions do not satisfy the requirements of section 110 and part D of title I of the Act and prevent full approval of the SIP revision.

1. MDAQMD Rule 1160 section (C)(2)(b) allows for engines to comply with an alternative emission reduction provision instead of the concentration-based emission limits for NO<sub>x</sub>. Specifically, this alternative provision allows for owners or operators of applicable equipment to submit a plan for alternative emissions reduction that would achieve an 80% or 90% reduction of emissions from a baseline emission rate. Because the rule does not clearly specify how to calculate the baseline emission rate, the rule is not sufficiently clear to constitute an enforceable emission limitation, control measure, means or technique, as required under § 110(a)(2) of the Act. The rule leaves the approval of the NO<sub>x</sub> emission reduction alternative to the District. Because the rule is not clear with respect to how to calculate the

baseline emission rate, and the approval of an alternative limit is left to the District, this provision allows for overbroad discretion on the part of the Director to modify requirements of the SIP without the procedure required under § 110 of the Act. In addition, the ambiguous alternative emission reduction provision could allow many units to emit more than the concentration limit in the rule by, in some cases, more than two times. These alternative limits have not been justified as meeting the RACT requirement.

2. Under section (C)(2)(b)(v), the alternative emission reduction option also allows for units operating at the same facility to aggregate their emissions in order to comply with the percentage reduction. This type of provision constitutes an EIP under the EPA's 2001 policy referenced above. The rule provisions do not meet the criteria for EIP integrity because they fail to require that any excess emission reductions credited through the provision be surplus (*i.e.*, not required by any other federally enforceable provision). This omission could allow reductions that are otherwise federally required to be aggregated and used to allow greater emissions at other units.

3. The compliance determination requirements described in section (E)(1)(c) do not require adequate source testing for emission units without emission control equipment. The requirements do not specify any frequency for testing beyond the initial compliance test, and do not specify what criteria must be met for certified manufacturer emission rates to be evidence of compliance.

*D. Proposed Action and Public Comment*

As authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is proposing a limited approval and limited disapproval of the submitted MDAQMD Rule 1160. We will accept comments from the public on this proposal until July 1, 2021. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. The submitted rule would replace the existing SIP-approved version of MDAQMD Rule 1160, which would be removed from the SIP. This approval is limited because the EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3).

If we finalize this disapproval, CAA section 110(c) would require the EPA to promulgate a federal implementation plan within 24 months of the effective date of our final action unless we

approve subsequent SIP revisions that correct the deficiencies identified in section II.C of this notice.

In addition, final disapproval would trigger the offset sanction in CAA section 179(b)(2) 18 months after the effective date of a final disapproval, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the deficiencies identified in our final action before the applicable deadline.

Note that the submitted rule has been adopted by the MDAQMD and the EPA's final limited disapproval would not prevent the local agency from enforcing it. The limited disapproval also would not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at: <https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf>.

### III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the MDAQMD rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### IV. Statutory and Executive Order Reviews

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

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

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

#### B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

#### C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

#### D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

#### E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

#### F. Executive Order 13175: Coordination With Indian Tribal Governments

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

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

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

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

#### I. National Technology Transfer and Advancement Act (NTTAA)

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

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

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

#### List of Subjects in 40 CFR Part 52

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

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

Dated: May 19, 2021.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*  
[FR Doc. 2021-11525 Filed 5-28-21; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 174 and 180

**[EPA-HQ-OPP-2021-0088; FRL-10023-95]**

#### Receipt of Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities May 2021

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Filing of petitions and request for comment.

**SUMMARY:** This document announces the Agency's receipt of initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before July 1, 2021.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number and the pesticide petition (PP) of interest as shown in the body of this document, by one of the following methods:

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

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

**FOR FURTHER INFORMATION CONTACT:**

Marietta Echeverria, Registration Division (7505P), main telephone number: (703) 305-7090, email address: [RDFRNotices@epa.gov](mailto:RDFRNotices@epa.gov); or Charles Smith, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305-7090, email address: [BPPDFRNotices@epa.gov](mailto:BPPDFRNotices@epa.gov). The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

**A. Does this action apply to me?**

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

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

**B. What should I consider as I prepare my comments for EPA?**

1. **Submitting CBI.** Do not submit this information to EPA through [regulations.gov](http://regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

3. **Environmental justice.** EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

**II. What action is the Agency taking?**

EPA is announcing receipt of pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the

pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), summaries of the petitions that are the subject of this document, prepared by the petitioners, are included in dockets EPA has created for these rulemakings. The dockets for these petitions are available at <http://www.regulations.gov>.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petitions so that the public has an opportunity to comment on these requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petitions may be obtained through the petition summaries referenced in this unit.

**A. Amended Tolerance Exemptions for Inerts (Except PIPS)**

**PP IN-11493.** (EPA-HQ-OPP-2021-0274). ADAMA Makhteshim, Ltd. c/o Makhteshim Agan of North America d/b/a ADAMA, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604, requests to amend an exemption from the requirement of a tolerance in 40 CFR 180.920 for residues of acetophenone (CAS Reg. No. 98-86-2) when used as an inert ingredient in pesticide formulations applied to growing crops. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact: RD.*

**B. Amended Tolerances for Inerts**

**PP IN-11407.** (EPA-HQ-OPP-2021-0185). Management Contract Services, Inc. on behalf of Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603, requests to amend the tolerance in 40 CFR 180.460 for residues of Benoxacor (2,2-dichloro-1-(3-methyl-2,3-dihydro-1,4-benzoxazin-4-yl)ethenone) (CAS Reg. No. 98730-04-2) when used as a pesticide inert ingredient (safener) in pesticide formulations to include any herbicide in or on raw agricultural commodities for which tolerances have been established for those active ingredients at 0.01 parts per million (ppm). Adequate enforcement methodology, GC/NPD, is available to enforce the tolerance expression. The analytical methodology for the determination of benoxacor and its metabolites in plant and animal commodities is Ciba Analytical Method AG536(C). *Contact: RD.*

*C. New Tolerance Exemptions for Inerts (Except PIPS)*

1. *PP IN-11401.* (EPA-HQ-OPP-2021-0308). The Innovative Reform Group on behalf of The Clorox Company, P.O. Box 493, Pleasanton, CA 94566-0803, requests to establish an exemption from the requirement of a tolerance under 40 CFR part 180.940(a) for residues of various fragrance components (CAS Reg No. multiple) when used as inert ingredients in antimicrobial pesticide formulations for use on food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils at end-use concentrations not to exceed 33 ppm. *Contact:* RD.

2. *PP IN-11402.* (EPA-HQ-OPP-2021-0311). The Innovative Reform Group on behalf of The Clorox Company, P.O. Box 493, Pleasanton, CA 94566-0803, requests to establish an exemption from the requirement of a tolerance under 40 CFR part 180.940(a) for residues of various fragrance components (CAS Reg No. multiple) when used as inert ingredients in antimicrobial pesticide formulations for use on food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils at end-use concentrations not to exceed 5 ppm. *Contact:* RD.

3. *PP IN-11409.* (EPA-HQ-OPP-2021-0321). Evonik Corporation, 299 Jefferson Road, Parsippany, NJ 07054, requests to establish an exemption from the requirement of a tolerance for residues of Silane, hexadecyltrimethoxy-, hydrolysis products with silica (CAS Reg. No. 199876-45-4) when used as a pesticide inert ingredient (stabilizer) in pesticide formulations under 40 CFR part 180.910 and 180.950. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

4. *IN-11410.* (EPA-HQ-OPP-2021-0292). Spring Regulatory Sciences (6620 Cypresswood Dr., Suite 250 Spring, TX 77379) on behalf of Earth Science Laboratories, Inc., (113 SE 22nd Street, Suite 1, Bentonville, AR 72712) requests to establish an exemption from the requirement of a tolerance for residues of polyammonium bisulfate (CAS Reg. No. 10043-02-4) to include the use as an inert ingredient (carrier, adjuvant, buffer and stabilizer) applied to growing crops pre- and post-harvest under 40 CFR part 180.910 and in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-

processing equipment, and food-processing equipment and utensils under 40 CFR part 180.940(a). The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

5. *PP IN-11458.* (EPA-HQ-OPP-2021-0273). Ingredion Incorporated, 5 Westbrook Corporate Center, Westchester, IL 60154, requests to establish an exemption from the requirement of a tolerance for residue of starch, 1-octenylbutanedioate, aluminum salt (CAS Reg. No. 9087-61-0) when used as an inert ingredient in pesticide formulations applied to growing crops under 40 CFR 180.920. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

6. *PP IN-11514.* (EPA-HQ-OPP-2021-0320). Spring Regulatory Sciences, 6620 Cypresswood Dr, Suite 250, Spring, TX 77379 on behalf of Nouryon Chemicals LLC, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180.960 for residues of Glycerides, soya mono- and di-ethoxylated (CAS Reg. No. 68553-06-0) when used as a pesticide inert ingredient in pesticide formulations Joint Inerts Task Force Cluster Support. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

7. *PP IN-11515.* (EPA-HQ-OPP-2021-0323). Spring Regulatory Sciences, 6620 Cypresswood Dr., Suite 250, Spring, TX 77379 on behalf of Nouryon Chemicals LLC, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180.910 and 180.930 for residues of Oxirane, 2-methyl-, polymer with oxirane, mono-C9-11-isoalkyl ethers, C10-rich, phosphates, potassium salts (CAS Reg. No. 2275654-37-8) when used as a pesticide inert ingredient in pesticide formulations Joint Inerts Task Force Cluster Support. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

*D. New Tolerance Exemptions for Non-Inerts (Except PIPS)*

*PP OF8851.* (EPA-HQ-OPP-2021-0232). Biofungitek, S.L., Parque Científico y Tecnológico de Bizkaia, Astondo Bidea (Building 612), 48160 Derio, Spain (c/o Compliance Services International, 7501 Bridgeport Way West, Lakewood, WA 94899), requests to establish an exemption from the

requirement of a tolerance in 40 CFR part 180 for residues of the biochemical fungicide potassium carbonate in or on all agricultural food commodities. The petitioner believes no analytical method is needed because the requirement is not applicable as an exemption from tolerance has been submitted. Potassium carbonate, a salt occurring abundantly in nature, would dissociate into its component ions (potassium and carbonate) once dissolved in water for application. In turn, carbonate will be part of an equilibrium mixture of bicarbonate, carbonate, and carbonic acid. Being naturally abundant, these ions would add to the like ions that already exist in the environment. Potassium and carbonate ions would be indistinguishable from the natural background of inorganic ions. *Contact:* BPPD.

*E. New Tolerances for Non-Inerts*

1. *PP 0E8888.* (EPA-HQ-OPP-2021-0204). Interregional Research Project Number 4 (IR-4), IR-4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08450, requests to establish a tolerance in 40 CFR 180.690 for residues of the fungicide, mandestrobin, 2-[(2,5-dimethylphenoxy)methyl]- $\alpha$ -methoxy-N-methylbenzeneacetamide in or on lettuce, head at 0.08 ppm, and lettuce, leaf at 4 ppm. The "Determination of S2200 and De-Xy-S-2200 in Crops," Method RM-48C-2B, which uses LC-MS/MS, is used to measure and evaluate the chemical. *Contact:* RD.

2. *PP 0E8881.* (EPA-HQ-2021-0156). IR-4, Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08450, requests to establish a tolerance in 40 CFR 180.337 for residues of the fungicide/bactericide, oxytetracycline, (4S,4aR,5S,5aR,6S,12aS)-4-(dimethylamino)-1,4,4a,5,5a,6,11,12a-octahydro-3,5,6,10,12,12a-hexahydroxy-6-methyl-1,11-dioxo-2-naphthacenecarboxamide, in or on the commodities olive at 0.1 ppm, walnut, black at 0.1 ppm and walnut, English at 0.1 ppm. A high-performance liquid chromatography method with tandem mass spectrometry detection (LC/MS/MS) is used to measure and evaluate the chemical. *Contact:* RD.

3. *PP 1E8911.* (EPA-HQ-OPP-2021-0213). IR-4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish a tolerance in 40 CFR part 180.434 for residues of the fungicide, propiconazole, (1-[(2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-

2-yl]methyl]-1*H*-1,2,4-triazole) and its metabolites determined by measuring only those propiconazole residues convertible to 2,4-dichlorobenzoic acid (2,4-DCBA) in or on the raw agricultural commodity vegetable, brassica, head and stem, group 5–16 at 4 ppm.

Analytical methods AG-626 and AG-454A were developed for the determination of residues of propiconazole and its metabolites containing the DCBA moiety and are used to measure and evaluate the chemical. *Contact:* RD.

4. *PP 0F8838.* (EPA-HQ-OPP-2020-0728). Valent U.S.A. LLC, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596 requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide fluopicolide in or on the following commodities: Cereal grains (crop group 15), aspirated grain fractions at 0.07 ppm; cereal grains (crop group 15), grain at 0.02 ppm; cereal grains (crop group 15), milled

byproducts at 0.07 ppm; cotton gin byproducts at 0.20 ppm; foliage of legume vegetables (crop group 7), forage at 0.15 ppm; foliage of legume vegetables (crop group 7), hay, straw, and vines at 0.20 ppm; forage, fodder and straw of cereal grains (crop group 16) at 0.50 ppm; grass forage, fodder, and hay (crop group 17) at 0.50 ppm; legume vegetables (crop group 6), seed, pea, bean (succulent or dried, except listed beans) at 0.03 ppm; nongrass animal feeds (crop group 18), forage, fodder, straw and hay at 0.50 ppm; oilseeds (crop group 20), refined oil at 0.10 ppm; oilseeds (crop group 20), seed at 0.04 ppm; peanut hay at 0.60 ppm; peanut nutmeat at 0.04 ppm; peanut, refined oil at 0.10 ppm; soybean refined oil at 0.08 ppm. Practical analytical methods for detecting and measuring levels of fluopicolide and its metabolites have been developed and validated in/on all appropriate plant and animal matrices. *Contact:* RD.

5. *PP 9F8777.* (EPA-HQ-OPP-2019-0542). Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide, bicyclopyrone, in or on lemongrass, dried at 0.5 ppm; lemongrass, fresh at 0.3 ppm; rosemary, dried at 0.3 ppm; rosemary, fresh at 0.03 ppm; wormwood, dried at 0.09 ppm and wormwood, fresh at 0.05 ppm. The Analytical methods GRM030.05A, GRM030.05B, GRM030.08A is used to measure and evaluate the chemical Bicyclopyrone. *Contact:* RD.

**Authority:** 21 U.S.C. 346a.

Dated: May 12, 2021.

**Delores Barber,**

*Director, Information Technology and Resources Management Division, Office of Program Support.*

[FR Doc. 2021-11315 Filed 5-28-21; 8:45 am]

**BILLING CODE 6560-50-P**

# Notices

## Federal Register

Vol. 86, No. 103

Tuesday, June 1, 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.

### DEPARTMENT OF AGRICULTURE

#### Commodity Credit Corporation

##### Farm Service Agency

[Docket ID FSA-2021-0006]

#### Information Collection Request; Assignment of Payment; Joint Payment Authorization; and Request for Waiver

**AGENCY:** Commodity Credit Corporation and Farm Service Agency, USDA.

**ACTION:** Notice; request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Commodity Credit Corporation (CCC), and Farm Service Agency (FSA) are requesting comments from all interested individuals and organizations on a revision and an extension of a currently approved information collection.

**DATES:** We will consider comments that we receive by August 2, 2021.

**ADDRESSES:** We invite you to submit comments on this notice. You may submit comments, identified by Docket ID: FSA-2021-0006, by any of the following methods:

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

- *Mail, Hand Delivery, or Courier:* Yanira Sanabria, Financial Specialist, USDA/FSA/FMD, STOP 0581, Patriot Plaza III, 355 E Street SW, Washington, DC 20024-0581.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Copies of the information collection may be requested by contacting Yanira Sanabria at the above address.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection

activities, Yanira Sanabria, (202) 772-6032; email: [yanira.sanabria@usda.gov](mailto:yanira.sanabria@usda.gov). Persons with disabilities who require alternative mean for communication should contact the USDA's TARGET Center at (202)720-2600 (Voice).

#### SUPPLEMENTARY INFORMATION:

**Title:** Assignment and Joint Payment Elections.

**Forms:** CCC-36, "Assignment of Payment;" CCC-37, "Joint Payment Authorization;" CCC-251, "Notice of Assignment;" CCC-252, "Instrument of Assignment;" and CCC-40, "Request for FSA and NRCS Payments of Federal Benefits by Check (Request for Waiver)."

**OMB Control Number:** 0560-0183.

**Expiration Date of Approval:** August 31, 2021.

**Type of Request:** Revision and extension of a currently approved information collection request.

**Abstract:** FSA and CCC are requesting an extension with a revision of the currently approved information. Section 8(g) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(g)) authorizes producers to assign FSA conservation program payments in accordance with regulations issued by the Secretary. The Assignment of Payments regulation as specified in 7 CFR part 1404 requires that any such assignment be signed by both the assignor and the assignee. The Agricultural Act of 1949, as amended, extends that authority to CCC programs, including rice, feed grains, cotton, and wheat. There are no regulations governing joint payments, but this service is offered as a result of public requests for the type of payment option. The Natural Conservation Service (NRCS) is also using the forms but most NRCS programs are exempt from the PRA.

Customer (Assignors) may use form CCC-36—Assignment of Payment to assign payments under various CCC, FSA, or NRCS programs. Customers may submit a completed CCC-36 to any FSA and NRCS County Office to be entered into the Financial Services application or the NRCS ProTracts web application. County Office data entry requires a second user for verification. The second user may be located in the same County Office or another Office. When there is no second user available, an employee from another County Office may

perform this action by submitting a faxed copy of the form.

Customers may use the form CCC-40, Request for FSA and NRCS Payments of Federal Benefits by Check to invoke a hardship waiver payment. In accordance with Treasury Regulation 31 CFR 208, Payments by electronic funds transfer (EFT) are not required for anyone over the age of 90 born prior to May 1, 1921. The hardship waiver request can currently be submitted either in person or by phone call to the local county FSA and NRCS office by entering the waiver request in the Financial Service application for the following reasons: Geographic Barrier or Mental Impairment.

The differences in the forms are that FSA and NRCS use a tax identification number instead of a social security number. Most NRCS programs and some FSA programs are exempt from the Paperwork Reduction Act.

The number of respondents increased by 573,949, and the burden hours also increased by 95,704 likely due to increased producers or farmers participating in several programs such as Coronavirus Food Assistance Program (CFAP), Wildfires and Hurricanes Indemnity Program and other FSA programs.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hours is the estimated average time per response multiplied by the estimated total annual responses.

**Estimate of Respondent Burden:** Public reporting burden for collecting information under this notice is estimated to average 0.1667 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

**Type of Respondents:** Producers participating in FSA, CCC, and NRCS programs.

**Estimated Number of Respondents:** 700,491.

**Estimated Average Number of Responses per Respondent:** 1.

**Estimated Total Annual Responses:** 700,491.

**Estimated Average Time per Response:** 0.1667.

**Estimated Total Annual Burden on Respondents:** 116,687 hours.

We are requesting comments on all aspects of this information collection to help FSA:

(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 burden of the collection of information including the validity of the methodology and assumptions used;

(3) Evaluate the quality, ability and clarity of the information technology; and

(4) Minimize the burden of the information collection on those who respond through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be made a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

**Zach Ducheneaux,**

*Administrator, Farm Service Agency.*

**Robert Stephenson,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 2021-11412 Filed 5-28-21; 8:45 am]

**BILLING CODE 3410-05-P**

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**Information Collection; Application for Permit for Use of Roads, Trails, or Areas Restricted by Regulation or Order**

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the renewal of an existing information collection, *Application for Permit for Use of Roads, Trails, or Areas Restricted by Regulation or Order*.

**DATES:** Comments must be received in writing by August 2, 2021 to be considered.

**ADDRESSES:** Commenters are encouraged to submit comments by email, if

possible. You may submit comments by any of the following methods:

- *Email:* [david.b.payne@usda.gov](mailto:david.b.payne@usda.gov).
- *Mail:* USDA Forest Service, Director, Engineering Staff, RPC5, 201 14th Street SW, Mail Stop 1101, Washington, DC 20024-1101.
- *Facsimile:* 703-605-1542.

The public may request an electronic copy of the draft supporting statement and/or any comments received be sent via return email. Requests should be emailed to [david.b.payne@usda.gov](mailto:david.b.payne@usda.gov).

**FOR FURTHER INFORMATION CONTACT:**

David Payne, Engineering Staff, 202-205-0963. Individuals who use telecommunication devices for the deaf may call the Federal Relay Service at 800-877-8339 twenty four hours a day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:**

**Title:** Application for Permit for Use of Roads, Trails, or Areas Restricted by Regulation or Order.

**OMB Number:** 0596-0016.

**Expiration Date of Approval:** April 30, 2022.

**Type of Request:** Renewal with revision of a currently approved information collection.

**Abstract:** Authority for permits for use of National Forest System (NFS) roads, NFS trails, and areas on NFS lands restricted by order or regulation derives from the National Forest Roads and Trails Act (16 U.S.C. 532-538). This statute authorizes the Secretary of Agriculture to promulgate regulations regarding use of NFS roads, NFS trails, and areas on NFS lands; establish procedures for sharing investments in NFS roads; and require commercial users to perform road maintenance commensurate with their use of NFS roads. Forest Service regulations implementing this authority are found in 36 CFR 212.5, 212.9, 212.51, 261.10, 261.12, 261.13, 261.54, and 261.55.

In particular, 36 CFR 212.9 authorizes the Chief of the Forest Service to establish procedures for investment sharing and to require commercial users to perform maintenance commensurate with their road use. Section 261.10 contains a national prohibition against constructing or maintaining an NFS road or NFS trail without a written authorization. Section 212.12 contains a national prohibition against violating the load, weight, height, length, or width limitations of State law when using NFS roads without a written authorization. Section 212.13 contains a national prohibition against possessing or operating a motor vehicle on NFS roads, NFS trails, or areas on NFS lands that are not designated for motor vehicle

use on a motor vehicle use map, unless the use is authorized by a written authorization. Section 261.54 authorizes issuance of an order prohibiting use of an NFS road in a manner prohibited by the order without a written authorization, including commercial hauling without a permit or written authorization when required by order. Section 261.55 authorizes issuance of an order prohibiting use of an NFS trail in a manner prohibited by the order without a written authorization.

Forest Service directives implementing the regulations are found in Forest Service Manual 2350, 7710, and 7730 and Forest Service Handbook 7709.59, chapter 20. These directives provide for the size and weight limits under State traffic law to apply on NFS roads and require the responsible official to designate NFS roads, NFS trails, and areas on NFS lands for motor vehicle use; enter into appropriate investment sharing arrangements, require commercial users of NFS roads to perform maintenance commensurate with their road use; and issue orders that implement the authority in 36 CFR 261.54. The permits road users obtain contain appropriate requirements for implementation of applicable regulations and directives.

- *Form FS-7700-40, Application for Permit for Use of Roads, Trails, or Areas Restricted by Regulation or Order.* This form will be used by individuals and entities that apply for a permit to use NFS roads, NFS trails, or areas on NFS lands that are subject to a restriction established by regulation or order. Examples of restrictions requiring permits are motor vehicle use on NFS roads and NFS trails that are not designated for that purpose; operating trucks that exceed size limits established by State traffic law on NFS roads; area closures during periods of high fire danger; and non-Federal commercial use of NFS roads.

The following information is collected: (1) The applicant's name, address, and telephone number; (2) identification of the NFS roads, NFS trails, and areas on NFS lands proposed for use (NFS roads and NFS trails are identified by Forest Service route number, and areas on NFS lands are identified using a map); (3) purpose of use; and (4) the proposed use schedule. The applicant is asked to provide explanatory information specific to the proposed use, including information on the types and size of vehicles, through attachments and remarks. There are standard attachments available for use when the application requests oversize vehicle use or commercial use of roads. The application is submitted to the

Forest Supervisor or District Ranger responsible for the NFS roads, NFS trails, or areas on NFS lands for which a permit is requested.

When applications for commercial use of roads restricted by order are received, the information is used to identify maintenance commensurate with the applicant's road use. The information is also used to calculate the proportion of acquisition, construction, and maintenance costs associated with the NFS roads proposed for use that is assignable to the applicant for purposes of investment sharing. When requests are for oversize vehicle use, the information is used to evaluate the structural capacity of bridges and potential adverse effects on the safety of other traffic on the roads proposed for use. When the application requests use of NFS roads, NFS trails, or areas on NFS lands that are not designated for motor vehicle use or are restricted by order, the information is used to decide whether and, if appropriate, when the use should be permitted.

The identifying information collected on form FS-7700-40, Application for Permit for Use of Roads, Trails, or Areas Restricted by Regulation or Order, is used on form FS-7700-41, Non-Federal Commercial Road Use Permit, and form FS-7700-48, Permit for Use of Roads, Trails, or Areas Restricted by Regulation or Order, to identify the permit holder and the routes or areas requested for use. When form FS-7700-41 is issued, road maintenance requirements, road use schedules, and any necessary payments to be made in lieu of performance of maintenance developed from the data submitted on or with form FS-7700-40 are included in form FS-7700-41. When form FS-7700-48 is issued, requirements resulting from data submitted with form FS-7700-40, such as requirements for signs and pilot cars when moving oversize vehicles, are included. A copy of form FS-7700-41 or form FS-7700-48 must be carried in the holder's motor vehicle during use of the NFS roads, NFS trails, or areas on NFS lands covered by the permit.

- *Forms FS-7700-41, Non-Federal Commercial Road Use Permit, and FS-7700-48, Permit for Use of Roads, Trails, or Areas Restricted by Regulation or Order.* Form FS-7700-41, FS-7700-41, and FS-7700-48 have been approved by the Office of Management and Budget (OMB). The Forest Service is seeking renewal of this approval. No information beyond that collected on form FS-7700-40 will be collected on forms FS-7700-41 and FS-7700-48.

*Estimate of Annual Burden:* 15 minutes per application.

**Type of Respondents:** All those who need to use NFS roads, NFS trails, or areas on NFS lands that are restricted by regulation or order.

**Estimated Annual Number of Respondents:** 20,000.

**Estimated Annual Number of Responses per Respondent:** One.

**Estimated Total Annual Burden on Respondents:** 5,000 hours.

**Public Comment:** Public comment is invited on (1) whether this information collection is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for OMB approval of the information collection.

Dated: May 25, 2021.

**Tina Johnna Terrell,**

*Acting Deputy Chief, National Forest System.*

[FR Doc. 2021-11430 Filed 5-28-21; 8:45 am]

**BILLING CODE 3411-15-P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meetings of the Missouri Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Missouri Advisory Committee (Committee) will hold a meeting via web conference on, June 09, 2021 at 12:00 p.m. Central Time. The purpose of the meeting is for the committee to review voting rights topics raised in testimony during 2020. The committee will also hear from guest speakers on the topic.

**DATES:** The meetings will be held on:

- Wednesday, June 09, 2021, at 12:00 p.m. Central Time <https://civilrights.webex.com/civilrights/j.php?MTID=m0a5312e6efa1991e785952dbe2e43a33> or Join by phone: 800-360-9505 USA Toll Free, Access code: 199 534 6158.

### FOR FURTHER INFORMATION CONTACT:

David Barreras, Designated Federal Officer, at [dbarreras@usccr.gov](mailto:dbarreras@usccr.gov) or (202) 499-4066.

**SUPPLEMENTARY INFORMATION:** Members of the public may listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at [dbarreras@usccr.gov](mailto:dbarreras@usccr.gov).

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via [www.facadatabase.gov](http://www.facadatabase.gov) under the Commission on Civil Rights, Missouri 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 Programs Unit at the above email or street address.

### Agenda

- I. Welcome & Roll Call
- II. Chair's Comments
- III. Guest Speakers
- IV. Committee Discussion
- V. Next Steps
- VI. Public Comment
- VII. Adjournment

**Exceptional Circumstance:** Pursuant to 41 CFR 102-3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting because of the exceptional circumstances of pending expiration of Committee member appointment terms.

Dated: May 26, 2021.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2021-11484 Filed 5-28-21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

#### Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration, U.S. Department of Commerce.

**ACTION:** Notice and opportunity for public comment.

**SUMMARY:** The Economic Development Administration (EDA) has received

petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below.

Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

#### SUPPLEMENTARY INFORMATION:

### LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[5/7/2021 through 5/20/2021]

Firm name	Firm address	Date accepted for investigation	Product(s)
Ramar-Hall, Inc .....	26 Old Indian Trail, Middlefield, CT 06455.	5/12/2021	The firm manufactures miscellaneous metal parts for aircraft.
Criterion Technology, Inc .....	101 McIntosh Parkway, Thomaston, GA 30286.	5/18/2021	The firm manufactures plastic covers and miscellaneous plastic parts and assemblies.
Edward Segal, Inc .....	360 Reynolds Bridge Road, Thomaston, CT 06787.	5/20/2021	The firm manufactures industrial machinery for setting eyelets, grommets, and rivets.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.8 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

**Bryan Borlik,**

*Director.*

[FR Doc. 2021-11438 Filed 5-28-21; 8:45 am]

**BILLING CODE 3510-WH-P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### In the Matter of: Behzad Pourghannad, NY11 AR Gandi, Tehran, Iran; Order Denying Export Privileges

On November 13, 2019, in the U.S. District Court for the Southern District of New York, Behzad Pourghannad ("Pourghannad") was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*) ("IEEPA"). Specifically, Pourghannad was convicted of IEEPA by conspiring to unlawfully export carbon fiber from the United States to Iran without having first obtained the required U.S. Government authorization. Pourghannad was sentenced to 20 months in prison and a \$100 assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act ("ECRA"),<sup>1</sup> the export privileges of any person who has been convicted of certain offenses, including, but not limited to, IEEPA, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior

Convictions). In addition, any Bureau of Industry and Security (BIS) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Pourghannad's conviction for violating IEEPA, and has provided notice and opportunity for Pourghannad to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations ("EAR" or the "Regulations"). 15 CFR 766.25.<sup>2</sup> BIS has not received a written submission from Pourghannad.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Pourghannad's export privileges under the Regulations for a period of 10 years from the date of Pourghannad's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Pourghannad had an interest at the time of his conviction.<sup>3</sup>

Accordingly, it is hereby ordered:

<sup>1</sup> ECRA was enacted as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852. Pourghannad's conviction post-dates ECRA's enactment on August 13, 2018.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2021).

<sup>3</sup> The Director, Office of Export Enforcement, is now the authorizing official for issuance of denial orders, pursuant to recent amendments to the Regulations (85 FR 73411, November 18, 2020).

First, from the date of this Order until November 13, 2029, Behzad Pourghannad, with a last known address prior to his conviction of NY11 AR Gandi, Tehran, Iran, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (“the Denied Person”), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned,

possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of the Export Control Reform Act (50 U.S.C. 4819(e)) and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Pourghannad by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Pourghannad may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Pourghannad and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until November 13, 2029.

**John Sonderman,**  
Director, Office of Export Enforcement.  
[FR Doc. 2021-11431 Filed 5-28-21; 8:45 am]  
**BILLING CODE 3510-DT-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C-580-879]**

### Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2018

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain corrosion-resistant steel products from the Republic of Korea. The period of review (POR) is January 1, 2018, through December 31, 2018. Commerce is also rescinding the review with respect to certain companies.

**DATES:** Applicable June 1, 2021.

### FOR FURTHER INFORMATION CONTACT:

Myrna Lobo or Jun Jack Zhao, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2371 or (202) 482-1396, respectively.

### SUPPLEMENTARY INFORMATION:

#### Background

Commerce published the *Preliminary Results* of this review on November 23, 2020.<sup>1</sup> In addition, Commerce issued a post-preliminary determination on the electricity for less than adequate remuneration allegation on April 26, 2021.<sup>2</sup> For a description of the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.<sup>3</sup>

On May 14, 2021, Commerce extended the deadline for the final results of this administrative review until May 24, 2021.<sup>4</sup>

#### Scope of the Order

The products covered by this order are certain corrosion-resistant steel products. For a complete description of the scope of this order, see the Issues and Decision Memorandum.

#### Analysis of Comments Received

All issues raised in interested parties’ case briefs are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues raised by parties, and to which Commerce responded in the Issues and Decision Memorandum, is provided in Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty

<sup>1</sup> See Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2018, 85 FR 74692 (November 23, 2020) (Preliminary Results), and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See Memorandum, “Countervailing Duty Administrative Review of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Post-Preliminary Analysis Memorandum of Electricity for Less than Adequate Remuneration,” dated April 26, 2021.

<sup>3</sup> See Memorandum, “Issues and Decision Memorandum for the Final Results of the 2018 Administrative Review of the Countervailing Duty Order on Certain Corrosion-Resistant Steel Products from the Republic of Korea,” (Issues and Decision Memorandum, or IDM), dated concurrently with, and hereby adopted by, this notice.

<sup>4</sup> See Memorandum, “Certain Corrosion-Resistant Steel Products from the Republic of Korea: Extension of Deadline for Final Results of Countervailing Duty Administrative Review,” dated May 14, 2021.

Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>.

### Changes Since the Preliminary Results

Based on the comments received and record evidence, we made certain changes to the *Preliminary Results* with respect to the net subsidy calculated for Dongbu Steel Co., Ltd./Dongbu Incheon Steel Co., Ltd. (Dongbu), and for companies not selected for individual review. These changes are explained in the Issues and Decision Memorandum.

### Partial Rescission of Review

We received no comments regarding the no shipments claims with respect to Nippon Steel Sales Vietnam Co., Ltd. (NSSVC), Hoa Sen Group (HSG), and Ton Dong A Corporation (TDA) since the *Preliminary Results*. Further, we have analyzed the questionnaire responses submitted by the respondents to Commerce since the *Preliminary Results* and determined that the record contains no information that calls into question a finding of no shipments. Therefore, we are rescinding this review with respect to NSSVC, HSG, and TDA.

### Companies Not Selected for Individual Review

For the companies not selected for individual review, because the rates

calculated for Dongbu and Hyundai Steel Company (Hyundai Steel) are above *de minimis* and not based entirely on facts available, we applied a subsidy rate based on the weighted-average of the subsidy rates calculated for Dongbu and Hyundai Steel using publicly ranged sales data submitted by the respondents.<sup>5</sup> This is consistent with the methodology that we would use in an investigation to establish the all-others rate, pursuant to section 705(c)(5)(A) of the Tariff Act of 1930, as amended (the Act).

### Final Results of Administrative Review

We determine that, for the period January 1, 2018 through December 31, 2018, the following total estimated net countervailable subsidy rates exist:

Company	Subsidy rate (percent <i>ad valorem</i> )
Dongbu Steel Co., Ltd./Dongbu Incheon Steel Co., Ltd .....	6.83
Hyundai Steel Company .....	0.51
Non-Selected Companies Under Review <sup>6</sup> .....	3.11

### Assessment Rate

Pursuant to 19 CFR 351.212(b)(2), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for the above-listed companies at the applicable *ad valorem* assessment rates listed. Consistent with its recent notice,<sup>7</sup> 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**. Further, for companies for which the review has been rescinded, we intend to instruct CBP to liquidate such entries at the cash deposit rate required at the time of entry. 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 Rates

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of

estimated countervailing duties in the amounts shown for each of the respective companies listed above. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposits, when imposed, shall remain in effect until further notice.

### Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

### Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the

respondents using each company's publicly ranged U.S. sales values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters.

**Federal Register**, in accordance with 19 CFR 351.224(b).

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: May 24, 2021.

**Christian Marsh,**  
*Acting Assistant Secretary for Enforcement and Compliance.*

### Appendix I

#### List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. List of Issues
- III. Background
- IV. Changes Since the Preliminary Results
- V. Scope of the Order
- VI. Period of Review
- VII. Rescission of Administrative Review, in Part
- VIII. Subsidies Valuation Information
- IX. Analysis of Programs
- X. Discussion of Comments
  - Comment 1: Whether Electricity for LTAR Confers a Benefit
  - Comment 2: Whether Commerce's Determination that Port Usage Rights Provides a Countervailable Benefit is Unsupported by Evidence and Contrary to Law

<sup>5</sup> With two respondents under review, Commerce normally calculates: (A) A weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined

<sup>6</sup> See Appendix II.

<sup>7</sup> See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings, 86 FR 3995 (January 15, 2021).

Comment 3: Whether Commerce Incorrectly Countervailed the Reduction for Sewerage Usage Fees

Comment 4: Whether the Restructuring of Dongbu's Existing Loans by GOK-Controlled Banks Provided a Financial Contribution to Dongbu

Comment 5: Whether the Restructured Loans Provided to Dongbu were Specific

Comment 6: Whether Commerce Should Use the Interest Rates from Loans Provided by Commercial Banks Participating in the Creditor Bank Committee as Benchmarks

Comment 7: Whether Dongbu Is Equityworthy and the Debt-to-Equity Swaps Should be Countervailed

Comment 8: Whether Commerce Correctly Calculated the Benefit to Dongbu from KDB Short-Term Discounted Loans for Export Receivables Program

Comment 9: Whether Commerce Correctly Calculated the Benefit from Dongbu Steel's Short-Term KRW Loans During the POR

## XI. Recommendation

### Appendix II

#### List of Non-Selected Companies

1. AJU Steel Co., Ltd.
2. Anjeon Tech
3. Benison Korea Transport
4. Core International
5. CS Global Logistics
6. Dai Yang Metal Co., Ltd.
7. GS Global Corp.
8. Hanwa (Korea) Co., Ltd.
9. Hebei Hongxing Auto Made
10. Integris
11. Jeongwha Polytech
12. Joo Sung Sea And AirCo., Ltd.
13. KC Tech
14. Kima Steel Corporation
15. Korea Clad Tech
16. Kyoungdo Steel Co., Ltd.
17. Market Connect Sales Services

18. Milestone Korea Co., Ltd.
19. POSCO
20. POSCO Coated & Color Steel Co., Ltd.
21. POSCO Daewoo Corporation
22. POSCO International Corporation
23. Qingdao Wangbaqiang
24. Roser Co., Ltd.
25. Samsung C&T Corporation
26. Sanglim Steel
27. SeAH Steel
28. Sejung Shipping Co., Ltd.
29. Seun Steel
30. Shandongsheng Cao Xian Yalu Mftd.
31. Sung A Steel
32. TCC Steel Co., Ltd.
33. Young Heung Iron and Steel Co., Ltd.
34. Young Steel Korea Co., Ltd.
35. Young Sun Steel Co.

[FR Doc. 2021-11387 Filed 5-28-21; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Initiation of Five-Year (Sunset) Reviews

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping duty (AD) and countervailing duty (CVD) order(s) and suspended investigation(s) listed below. The International Trade Commission (the ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

**DATES:** Applicable (June 1, 2021).

#### FOR FURTHER INFORMATION CONTACT:

Commerce official identified in the "Initiation of Review" section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205-3193.

#### SUPPLEMENTARY INFORMATION:

##### Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

##### Initiation of Review

In accordance with section 751(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s) and suspended investigation(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A-351-843 ....	731-TA-1283	Brazil .....	Cold-Rolled Steel Flat Products (1st Review) .....	Thomas Martin, (202) 482-3936.
A-570-029 ....	731-TA-1284	China .....	Cold-Rolled Steel Flat Products (1st Review) .....	Thomas Martin, (202) 482-3936.
A-570-894 ....	731-TA-1070-B	China .....	Tissue Paper Products (3rd Review) .....	Mary Kolberg, (202) 482-1785.
A-570-896 ....	731-TA-1071	China .....	Magnesium Metal (3rd Review) .....	Mary Kolberg, (202) 482-1785.
A-570-026 ....	731-TA-1274	China .....	Corrosion-Resistant Steel Products (1st Review) ....	Mary Kolberg, (202) 482-1785.
A-533-865 ....	731-TA-1285	India .....	Cold-Rolled Steel Flat Products (1st Review) .....	Thomas Martin, (202) 482-3936.
A-475-832 ....	731-TA-1276	Italy .....	Corrosion-Resistant Steel Products (1st Review) ....	Mary Kolberg, (202) 482-1785.
A-588-873 ....	731-TA-1286	Japan .....	Cold-Rolled Steel Flat Products (1st Review) .....	Thomas Martin, (202) 482-3936.
A-580-881 ....	731-TA-1287	South Korea	Cold-Rolled Steel Flat Products (1st Review) .....	Thomas Martin, (202) 482-3936.
A-580-878 ....	731-TA-1277	South Korea	Corrosion-Resistant Steel Products (1st Review) ....	Mary Kolberg, (202) 482-1785.
A-583-856 ....	731-TA-1278	Taiwan .....	Corrosion-Resistant Steel Products (1st Review) ....	Mary Kolberg, (202) 482-1785.
A-412-824 ....	731-TA-1290	United Kingdom.	Cold-Rolled Steel Flat Products (1st Review) .....	Thomas Martin, (202) 482-3936.
A-533-863 ....	731-TA-1275	India .....	Corrosion-Resistant Steel Products (1st Review) ....	Mary Kolberg, (202) 482-1785.
C-351-844 ....	701-TA-540	Brazil .....	Cold-Rolled Steel Flat Products (1st Review) .....	Mary Kolberg, (202) 482-1785.
C-570-027 ....	701-TA-534	China .....	Corrosion-Resistant Steel Products (1st Review) ....	Jacqueline Arrowsmith, (202) 482-5255.
C-570-030 ....	701-TA-541	China .....	Cold-Rolled Steel Flat Products (1st Review) .....	Jacqueline Arrowsmith, (202) 482-5255.
C-533-866 ....	701-TA-542	India .....	Cold-Rolled Steel Flat Products (1st Review) .....	Thomas Martin, (202) 482-3936.
C-533-864 ....	701-TA-535	India .....	Corrosion-Resistant Steel Products (1st Review) ....	Thomas Martin, (202) 482-3936.
C-475-833 ....	701-TA-536	Italy .....	Corrosion-Resistant Steel Products (1st Review) ....	Thomas Martin, (202) 482-3936.
C-580-882 ....	701-TA-543	South Korea	Cold-Rolled Steel Flat Products (1st Review) .....	Jacqueline Arrowsmith, (202) 482-5255.
C-580-879 ....	701-TA-537	South Korea	Corrosion-Resistant Steel Products (1st Review) ....	Mary Kolberg, (202) 482-1785.

## Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: <https://enforcement.trade.gov/sunset/>. All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

## Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business

proprietary information, until further notice.<sup>1</sup>

## Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.<sup>2</sup>

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: May 20, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2021–11473 Filed 5–28–21; 8:45 am]

**BILLING CODE 3510–DS–P**

<sup>1</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19*, 85 FR 41363 (July 10, 2020).

<sup>2</sup> See 19 CFR 351.218(d)(1)(iii).

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

#### FOR FURTHER INFORMATION CONTACT:

Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

#### Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

#### Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be “collapsed” (*i.e.*, treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) Identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further,

if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

#### Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

#### Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.<sup>1</sup> Section 773(e) of the Act states that “if a particular market

situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

*Opportunity To Request a Review:* Not later than the last day of June 2021,<sup>2</sup> interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

	Period of review
<b>Antidumping Duty Proceedings</b>	
GERMANY: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A-428-845 .....	6/1/20-5/31/21
INDIA:	
Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A-533-873 .....	6/1/20-5/31/21
Glycine, A-533-883 .....	6/1/20-5/31/21
Quartz Surface Products, A-533-889 .....	12/13/19-5/31/21
ITALY: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A-475-838 .....	6/1/20-5/31/21
JAPAN:	
Carbon and Alloy Seamless Standard, Line, and Pressure (over 4½ inches), A-588-850 .....	6/1/20-5/31/21
Carbon and Alloy Seamless Standard, Line, and Pressure (under 4½ inches), A-588-851 .....	6/1/20-5/31/21
Glycine, A-588-878 .....	6/1/20-5/31/21
REPUBLIC OF KOREA: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A-580-892 .....	6/1/20-5/31/21
SOCIALIST REPUBLIC OF VIETNAM:	
Certain Tool Chests and Cabinets, A-552-821 .....	6/1/20-5/31/21
Laminated Woven Sacks, A-552-823 .....	6/1/20-5/31/21
SPAIN:	
Chlorinated Isocyanurates, A-469-814 .....	6/1/20-5/31/21
Finished Carbon Steel Flanges, A-469-815 .....	6/1/20-5/31/21
SWITZERLAND: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A-441-801 .....	6/1/20-5/31/21
TAIWAN: Helical Spring Lock Washers, A-583-820 .....	6/1/20-5/31/21
THE PEOPLE'S REPUBLIC OF CHINA:	
Artist Canvas, A-570-899 .....	6/1/20-5/31/21
Ceramic Tile, A-570-108 .....	11/14/19-5/31/21
Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A-570-058 .....	6/1/20-5/31/21
Certain Tool Chests and Cabinets, A-570-056 .....	6/1/20-5/31/21

<sup>1</sup> See Trade Preferences Extension Act of 2015, Public Law 114-27, 129 Stat. 362 (2015).

<sup>2</sup> Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

	Period of review
Chlorinated Isocyanurates, A-570-898 .....	6/1/20-5/31/21
Furfuryl Alcohol, A-570-835 .....	6/1/20-5/31/21
High Pressure Steel Cylinders, A-570-977 .....	6/1/20-5/31/21
Polyester Staple Fiber, A-570-905 .....	6/1/20-5/31/21
Prestressed Concrete Steel Wire Strand, A-570-945 .....	6/1/20-5/31/21
Silicon Metal, A-570-806 .....	6/1/20-5/31/21
Tapered Roller Bearings, A-570-601 .....	6/1/20-5/31/21
TURKEY: Quartz Surface Products, A-489-837 .....	12/13/19-5/31/21
<b>Countervailing Duty Proceedings</b>	
INDIA:	
Glycine, C-533-884 .....	1/1/20-12/31/20
Quartz Surface Products, C-533-890 .....	10/11/19-12/31/20
SOCIALIST REPUBLIC OF VIETNAM: Laminated Woven Sacks, C-552-824 .....	1/1/20-12/31/20
THE PEOPLE'S REPUBLIC OF CHINA:	
Ceramic Tile, C-570-109 .....	9/12/19-12/31/20
Glycine, C-570-081 .....	1/1/20-12/31/20
High Pressure Steel Cylinders, C-570-978 .....	1/1/20-12/31/20
Stainless Steel Flanges, C-570-065 .....	1/1/20-12/31/20
TURKEY: Quartz Surface Products, C-489-838 .....	10/11/19-12/31/20

## Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested

party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.<sup>3</sup>

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.<sup>4</sup> Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.<sup>5</sup> In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final

decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at <https://access.trade.gov>.<sup>6</sup> Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.<sup>7</sup>

Commerce will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for

<sup>3</sup> See the Enforcement and Compliance website at <https://legacy.trade.gov/enforcement/>.

<sup>4</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

<sup>5</sup> In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

<sup>6</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

<sup>7</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 41363 (July 10, 2020).

requests received by the last day of June 2021. If Commerce does not receive, by the last day of June 2021, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures “gap” period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 20, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2021-11462 Filed 5-28-21; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C-560-829]**

### Certain Uncoated Paper From Indonesia: Final Results of the Expedited First Five-Year Sunset Review of the Countervailing Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of this sunset review, the Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on certain uncoated paper from Indonesia would be likely to lead to continuation or recurrence of countervailable subsidies at the levels indicated in the “Final Results of Sunset Review” section of this notice.

**DATES:** Applicable June 1, 2021.

#### FOR FURTHER INFORMATION CONTACT:

Terre Keaton Stefanova, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade

Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1280.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 3, 2016, Commerce published in the **Federal Register** the CVD order on certain uncoated paper from Indonesia.<sup>1</sup> On February 1, 2021, Commerce published the notice of initiation of the first sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>2</sup> On February 12 and 16, 2021, Commerce received notices of intent to participate from domestic interested parties<sup>3</sup> within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>4</sup> The domestic interested parties claimed interested party status pursuant to sections 771(9)(C) and (D) of the Act, respectively, as either manufacturers in the United States of the domestic like product or as a certified union with workers engaged in the production of the domestic like product in the United States.<sup>5</sup>

On March 1, 2021, Commerce received an adequate substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).<sup>6</sup> Commerce received no substantive response from any other interested parties with respect to the *Order* covered by this sunset review. On March 23, 2021, Commerce notified the U.S. International Trade Commission that it did not receive an adequate

<sup>1</sup> See *Certain Uncoated Paper from Indonesia and the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (Indonesia) and Countervailing Duty Order (People's Republic of China)*, 81 FR 11187 (March 3, 2016) (*Order*).

<sup>2</sup> See *Initiation of Five-Year (Sunset) Review*, 86 FR 7709 (February 1, 2021).

<sup>3</sup> The domestic interested parties are: Domtar Corporation (Domtar); Finch Paper LLC (Finch); North Pacific Paper Company (NORPAC); Packaging Corporation of America (PCA); and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Services Workers International Union (USW) (collectively, domestic interested parties).

<sup>4</sup> See Domtar, Finch, and NORPAC's Letter, “First Five-Year (“Sunset”) Review Of Countervailing Duty Order On Certain Uncoated Paper from Indonesia: Domestic Industry's Notice of Intent To Participate In Sunset Review,” dated February 12, 2021; and PCA and USW's Letter, “Notice of Intent to Participate in the First Five-Year Review of the Countervailing Duty Order on Certain Uncoated Paper from Indonesia,” dated February 16, 2021.

<sup>5</sup> *Id.*

<sup>6</sup> See Domestic Interested Parties' Letter, “Domestic Industry's Substantive Response to Notice of Initiation,” dated March 1, 2021.

substantive response from respondent interested parties.<sup>7</sup> As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order*.

##### Scope of the Order

The scope of the *Order* includes uncoated paper in sheet form; weighing at least 40 grams per square meter but not more than 150 grams per square meter; that either is a white paper with a GE brightness level<sup>8</sup> of 85 or higher or is a colored paper; whether or not surface-decorated, printed (except as described below), embossed, perforated, or punched; irrespective of the smoothness of the surface; and irrespective of dimensions (Certain Uncoated Paper).

Certain uncoated paper includes (a) uncoated free sheet paper that meets this scope definition; (b) uncoated ground wood paper produced from bleached chemi-thermo-mechanical pulp (BCTMP) that meets this scope definition; and (c) any other uncoated paper that meets this scope definition regardless of the type of pulp used to produce the paper.

Specifically excluded from the scope of this order are (1) paper printed with final content of printed text or graphics and (2) lined paper products, typically school supplies, composed of paper that incorporates straight horizontal and/or vertical lines that would make the paper unsuitable for copying or printing purposes. For purposes of this scope definition, paper shall be considered “printed with final content” where at least one side of the sheet has printed text and/or graphics that cover at least five percent of the surface area of the entire sheet.

On September 1, 2017, Commerce determined that imports of uncoated paper with a GE brightness of 83 +/- 1% (83 Bright paper), otherwise meeting the description of in-scope

<sup>7</sup> See Commerce's Letter, “Sunset Reviews Initiated on February 1, 2021,” dated March 23, 2021.

<sup>8</sup> One of the key measurements of any grade of paper is brightness. Generally speaking, the brighter the paper the better the contrast between the paper and the ink. Brightness is measured using a GE Reflectance Scale, which measures the reflection of light off a grade of paper. One is the lowest reflection, or what would be given to a totally black grade, and 100 is the brightest measured grade. “Colored paper” as used in this scope definition means a paper with a hue other than white that reflects one of the primary colors of magenta, yellow, and cyan (red, yellow, and blue) or a combination of such primary colors.

merchandise, constitute merchandise “altered in form or appearance in minor respects” from in-scope merchandise that are subject to this order.<sup>9</sup>

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) categories 4802.56.1000, 4802.56.2000, 4802.56.3000, 4802.56.4000, 4802.56.6000, 4802.56.7020, 4802.56.7040, 4802.57.1000, 4802.57.2000, 4802.57.3000, and 4802.57.4000. Some imports of subject merchandise may also be classified under 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.5000, 4802.62.6020,

4802.62.6040, 4802.69.1000, 4802.69.2000, 4802.69.3000, 4811.90.8050 and 4811.90.9080. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

#### Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum.<sup>10</sup> A list of the topics discussed in the Issues and Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s

Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://enforcement.trade.gov/fmn/>.

#### Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, we determine that revocation of the *Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the following net countervailable subsidy rates:

	Manufacturers/producers/exporters	Net countervailable subsidy (percent)
PT Anugerah Kertas Utama, PT Riau Andalan Kertas, APRIL Fine Paper Macao Offshore Limited, PT Asia Pacific Rayon, PT Sateri Viscose International, A P Fine Paper Trading (Hong Kong) Limited, and APRIL International Enterprise Pte. Ltd .....		21.21
Indah Kiat Pulp & Paper TBK/Pabrik Kertas Tjiwi Kimia/PT Pindo Deli Pulp and Paper Mills .....		109.14
Great Champ Trading Limited .....		103.99
All Others .....		21.21

#### Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective orders, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

#### Notification to Interested Parties

We are issuing and publishing the final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.218(f)(3).

Dated: May 25, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

#### Appendix

##### List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. History of the Order

- V. Legal Framework
- VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
  2. Net Countervailable Subsidy Rates Likely to Prevail
  3. Nature of the Subsidies
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2021-11461 Filed 5-28-21; 8:45 am]

**BILLING CODE 3510-DS-P**

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

**[A-523-808]**

#### Certain Steel Nails From the Sultanate of Oman: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission 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 sales of certain steel nails (steel nails) from the Sultanate of Oman (Oman) have been made below normal value during the period of review (POR),

July 1, 2019, through June 30, 2020. Further, Commerce is rescinding the administrative review, in part, with respect to Astrotech Steels Private Ltd. (Astrotech), Geekay Wires Limited (Geekay), Overseas International Steel Industry LLC & Overseas Distribution Services Inc. (Overseas), Trinity Steel Private Limited (Trinity Steel), Universal Freight Services LLC (Universal Freight Services), and WWL India Private Ltd (WWL India). Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable June 1, 2021.

##### FOR FURTHER INFORMATION CONTACT:

Dakota Potts, 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) 482-0223.

##### SUPPLEMENTARY INFORMATION:

##### Background

Commerce is conducting an administrative review of the antidumping duty order on steel nails

Review of the Countervailing Duty Order on Certain Uncoated Paper from Indonesia,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

<sup>9</sup> See Certain Uncoated Paper from Australia, Brazil, the People’s Republic of China, Indonesia, and Portugal: Affirmative Final Determination of Circumvention of the Antidumping and

Countervailing Duty Orders, 82 FR 41610 (September 1, 2017).

<sup>10</sup> See Memorandum, “Issues and Decision Memorandum for the Expedited First Sunset

from Oman.<sup>1</sup> On July 1, 2020, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.<sup>2</sup> The notice of initiation published on September 3, 2020.<sup>3</sup> On October 2, 2020, Commerce selected Oman Fasteners LLC (Oman Fasteners) as the sole mandatory respondent.<sup>4</sup> For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.<sup>5</sup>

### Scope of the Order

The products covered by the *Order* are nails from Oman. For a complete description of the scope, see the Preliminary Decision Memorandum.<sup>6</sup>

### Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of initiation of the requested review. On September 21, 2020, Mid Continent Steel & Wire (the petitioner) withdrew its requests for an administrative review of Astrotech, Geekay, Overseas, Trinity Steel, Universal Freight Services, and WWL India. No other party requested a review of these companies. Accordingly, we are rescinding this review with respect to these companies, pursuant to 19 CFR 351.213(d)(1). The review will continue with respect to Oman Fasteners.

### Methodology

Commerce is conducting this administrative review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930 (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

<sup>1</sup> See *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015) (*Order*).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 39531 (July 1, 2020).

<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 54983 (September 3, 2020) (*Initiation Notice*).

<sup>4</sup> See Commerce's Letter, dated October 2, 2020.

<sup>5</sup> See Memorandum, "Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review of Certain Steel Nails from the Sultanate of Oman; 2019–2020," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

<sup>6</sup> *Id.*

For a full discussion of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. A list of the topics discussed in the Preliminary Decision Memorandum is attached as in appendix II to this notice.

### Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margin exists for the period July 1, 2019, through June 30, 2020:

Exporter/producer	Weighted-average dumping margin (percent)
Oman Fasteners LLC .....	1.76

### Assessment Rates

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.<sup>7</sup> The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.<sup>8</sup>

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 summons is timely 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).

Pursuant to 19 CFR 351.212(b)(1), where an examined respondent's weighted-average dumping margin is not zero or *de minimis* (*i.e.*, less than 0.5 percent), we calculated an importer-specific *ad valorem* duty assessment rate based on the ratio of the total amount of dumping calculated for the U.S. sales for a given importer to the total entered value of those sales. Where

<sup>7</sup> See 19 CFR 351.212(b).

<sup>8</sup> See section 751(a)(2)(C) of the Act.

the mandatory respondent did not report entered value, we calculated the entered value in order to calculate the assessment rate. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's "automatic assessment" practice will apply to entries of subject merchandise during the POR produced by Oman Fasteners for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate such unreviewed entries pursuant to the reseller policy,<sup>9</sup> *i.e.*, the assessment rate for such entries will be equal to the all-others rate established in the investigation (*i.e.* 9.10 percent),<sup>10</sup> if there is no rate for the intermediate company(ies) involved in the transaction.

### Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of steel nails from Oman entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the exporters listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of subject merchandise; and (4) the cash deposit

<sup>9</sup> For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

<sup>10</sup> See *Certain Steel Nails from the Republic of Oman: Final Determination of Sales at Less Than Fair Value*, 80 FR 28955 (May 20, 2015).

rate for all other manufacturers or exporters will continue to be 9.10 percent, the all-others rate made effective by the LTFV investigation.<sup>11</sup> These deposit requirements, when imposed, shall remain in effect until further notice.

#### Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.<sup>12</sup> 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.<sup>13</sup> Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>14</sup> Case and rebuttal briefs should be filed using ACCESS and must be served on interested parties.<sup>15</sup> Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.<sup>16</sup>

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Acting Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.<sup>17</sup> Parties should

confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

An electronically-filed request for a hearing must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.<sup>18</sup> Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in all written briefs, not later than 120 days after the publication of these preliminary results in the **Federal Register** pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1), unless otherwise extended.<sup>19</sup>

#### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of 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

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: May 19, 2021.

**Christian Marsh,**  
*Acting Assistant Secretary for Enforcement and Compliance.*

#### Appendix I

##### List of Topics Discussed in the Preliminary Decision Memorandum

###### I. Summary

- II. Background
- III. Scope of the AD Order
- IV. Rescission of Requested Companies
- V. Discussion of the methodology
- VI. Recommendation

[FR Doc. 2021-11464 Filed 5-28-21; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

#### SUPPLEMENTARY INFORMATION:

#### Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

#### Upcoming Sunset Reviews for July 2021

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in July 2021 and will appear in that month's notice of *Initiation of Five-Year Sunset Reviews* (Sunset Review).

#### Department contact

#### Antidumping Duty Proceedings

Carbon Steel Butt-Weld Pipe Fittings from Brazil, A-351-602 (5th Review) .....	Mary Kolberg, (202) 482-1785.
Carbon Steel Butt-Weld Pipe Fittings from China, A-570-814 (5th Review) .....	Mary Kolberg, (202) 482-1785.
Hydrofluorocarbon Blends and Components Thereof from China, A-570-028 (1st Review) .....	Mary Kolberg, (202) 482-1785.
Porcelain-on-Steel Cooking Ware from China, A-570-506 (5th Review) .....	Thomas Martin, (202) 482-3936.
Carbon Steel Butt-Weld Pipe Fittings from Japan, A-588-602 (5th Review) .....	Mary Kolberg, (202) 482-1785.
Stainless Steel Wire Rod from Japan, A-588-843 (4th Review) .....	Mary Kolberg, (202) 482-1785.
Stainless Steel Wire Rod from South Korea, A-580-829 (4th Review) .....	Mary Kolberg, (202) 482-1785.
Carbon Steel Butt-Weld Pipe Fittings from Taiwan, A-583-605 (5th Review) .....	Mary Kolberg, (202) 482-1785.
Stainless Steel Wire Rod from Taiwan, A-583-828 (4th Review) .....	Mary Kolberg, (202) 482-1785.
Carbon Steel Butt-Weld Pipe Fittings from Thailand, A-549-807 (5th Review) .....	Mary Kolberg, (202) 482-1785.

<sup>11</sup> *Id.*

<sup>12</sup> See 19 CFR 351.309(c)(1)(ii); see also 19 CFR 351.303 (for general filing requirements).

<sup>13</sup> See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

<sup>14</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>15</sup> See 19 CFR 351.303.

<sup>16</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to Covid-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

<sup>17</sup> See 19 CFR 351.310(c).

<sup>18</sup> See 19 CFR 351.310(c); see also 19 CFR 351.303(b)(1).

<sup>19</sup> See section 751(a)(3)(A) of the Act.

	Department contact
<b>Countervailing Duty Proceedings</b> No Sunset Review of countervailing duty orders is scheduled for initiation in July 2021.	
<b>Suspended Investigations</b> No Sunset Review of suspended investigations is scheduled for initiation in July 2021.	

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The notice of *Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the notice of initiation.

Please note that if Commerce receives a "Notice of Intent to Participate" from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.<sup>1</sup>

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 20, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2021-11476 Filed 5-28-21; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-570-947, C-570-948]**

### Steel Grating From the People's Republic of China: Continuation of Antidumping and Countervailing Duty Orders

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

<sup>1</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

**SUMMARY:** As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping (AD) and countervailing duty (CVD) orders on steel grating from the People's Republic of China (China) would likely lead to continuation or recurrence of dumping, net countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

**DATES:** Applicable June 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Kristen Ju (AD) or Daniel Alexander (CVD), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3699 or (202) 482-4313, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 23, 2010, Commerce published both the AD and CVD orders on steel grating from China.<sup>1</sup> On October 1, 2020, the ITC instituted,<sup>2</sup> and on Commerce initiated,<sup>3</sup> the second five-year (sunset) reviews of the AD and CVD orders on steel grating from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the Orders on steel grating from China would be likely to lead to continuation or recurrence of dumping and countervailable subsidies and, therefore, notified the ITC of the magnitude of the margins and net subsidy rates likely to prevail should the Orders be revoked.<sup>4</sup>

<sup>1</sup> See *Certain Steel Grating from the People's Republic of China: Antidumping Duty Order*, 75 FR 43143 (July 23, 2010); see also *Certain Steel Grating from the People's Republic of China: Countervailing Duty Order*, 75 FR 43144 (July 23, 2010) (collectively, Orders).

<sup>2</sup> See *Certain Steel Grating from China; Institution of Five-Year Reviews*, 85 FR 61981 (October 1, 2020).

<sup>3</sup> See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 61928 (October 1, 2020).

<sup>4</sup> See *Certain Steel Grating from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order*, 86 FR 7356 (January 28, 2021), and accompanying Issues and Decision Memorandum

On May 24, 2021, the ITC published its determinations, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the Orders would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>5</sup>

#### Scope of the Orders

The product covered by these Orders is certain steel grating, consisting of two or more pieces of steel, including load-bearing pieces and cross pieces, joined by any assembly process, regardless of: (1) Size or shape; (2) method of manufacture; (3) metallurgy (carbon, alloy, or stainless); (4) the profile of the bars; and (5) whether or not they are galvanized, painted, coated, clad or plated. Steel grating is also commonly referred to as "bar grating," although the components may consist of steel other than bars, such as hot-rolled sheet, plate, or wire rod.

The scope of these Orders excludes expanded metal grating, which is comprised of a single piece or coil of sheet or thin plate steel that has been slit and expanded, and does not involve welding or joining of multiple pieces of steel. The scope of these Orders also excludes plank type safety grating which is comprised of a single piece or coil of sheet or thin plate steel, typically in thickness of 10 to 18 gauge, that has been pierced and cold formed, and does not involve welding or joining of multiple pieces of steel.

Certain steel grating that is the subject of these Orders is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.90.7000. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of these Orders is dispositive.

(IDM); see also *Certain Steel Grating from the People's Republic of China: Final Results of the Expedited Second Five-Year Sunset Review of the Countervailing Duty Order*, 86 FR 8765 (February 9, 2021), and accompanying IDM.

<sup>5</sup> See *Certain Steel Grating from China*, 86 FR 27892 (May 24, 2021); see also *Certain Steel Grating from China (Inv. Nos. 701-TA-465 and 731-TA-1161 (Second Review)*, USITC Publication 5195, May 2021.

## Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or a recurrence of dumping and countervailable subsidies and of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders*. U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

## Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

## Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: May 25, 2021.

**Christian Marsh,**  
Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021-11465 Filed 5-28-21; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-602-807; A-351-842; A-570-022; A-560-828; A-471-807]**

### Uncoated Paper From Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of these sunset reviews, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on certain uncoated paper (uncoated paper) from Australia, Brazil, the People's Republic of China (China), Indonesia, and Portugal would be likely to lead to the continuation or recurrence of dumping at the levels indicated in the "Final Results of Review" section of this notice.

**DATES:** Applicable June 1, 2021.

#### FOR FURTHER INFORMATION CONTACT:

Patrick Barton, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0012.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 1, 2021, Commerce published the notice of initiation of the first sunset reviews of the *Orders*<sup>1</sup> on certain uncoated paper (uncoated paper) from Australia, Brazil, China, Indonesia, and Portugal pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act).<sup>2</sup> On February 12, 2021, Commerce received a notice of intent to participate from Domtar Corporation (Domtar), Finch Paper LLC (Finch), and North Pacific Paper Company (NORPAC), within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>3</sup> Domtar, Finch, and NORPAC claimed interested party status under section 771(9)(C) of the Act, as domestic producers of uncoated paper in the United States. On February 16, 2021, Commerce received notice of

<sup>1</sup> See Certain Uncoated Paper from Australia, Brazil, Indonesia, the People's Republic of China, and Portugal: Amended Final Affirmative Antidumping Determinations for Brazil and Indonesia and Antidumping Duty Orders, 81 FR 11174 (March 3, 2016) (Orders).

<sup>2</sup> See Initiation of Five-Year (Sunset) Reviews, 86 FR 7709 (February 1, 2021).

<sup>3</sup> See Domtar, Finch, and NORPAC's Letters, "First Five-Year ("Sunset") Review of Antidumping Order on Certain Uncoated Paper from Australia: Domestic Industry's Notice of Intent to Participate in Sunset Review," dated February 12, 2021; "First Five-Year ("Sunset") Review of Antidumping Order on Certain Uncoated Paper from Brazil: Domestic Industry's Notice of Intent to Participate in Sunset Review," dated February 12, 2021; "First Five-Year ("Sunset") Review of Antidumping Order on Certain Uncoated Paper from the People's Republic of China: Domestic Industry's Notice of Intent to Participate in Sunset Review," dated February 12, 2021; "First Five-Year ("Sunset") Review of Antidumping Order on Certain Uncoated Paper from Indonesia: Domestic Industry's Notice of Intent to Participate in Sunset Review," dated February 12, 2021; and "First Five-Year ("Sunset") Review of Antidumping Order on Certain Uncoated Paper from Portugal: Domestic Industry's Notice of Intent to Participate in Sunset Review," dated February 12, 2021.

intent to participate from Packaging Corporation of America (PCA) and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Services Workers International Union (USW), within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>4</sup> PCA claimed interested party status under section 771(9)(C) of the Act and 19 CFR 351.102(b)(29)(v), as a domestic producer of uncoated paper in the United States, and USW claimed interested party status under section 771(9)(D) of the Act and 19 CFR 351.102(b)(29)(vi), as a certified union with workers engaged in the manufacture and production of the domestic like product in the United States.

On March 1, 2021, Commerce received a complete substantive response from the domestic interested parties<sup>5</sup> within the 30-day deadline specified in 19 CFR 351.218(d)(3).<sup>6</sup> No respondent interested party submitted a substantive response within the 50-day deadline. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce is

<sup>4</sup> See PCA and USW's Letters, "Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Certain Uncoated Paper from Australia," dated February 16, 2021; "Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Certain Uncoated Paper from Brazil," dated February 16, 2021; "Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Certain Uncoated Paper from the People's Republic of China," dated February 16, 2021; "Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Certain Uncoated Paper from Indonesia," dated February 16, 2021; and "Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Certain Uncoated Paper from Portugal," dated February 16, 2021.

<sup>5</sup> Collectively, Domtar, Finch Paper, NORPAC, PCA, and USW are referred to as the domestic interested parties.

<sup>6</sup> See Domestic Interested Parties' Letters, "First Five-Year ("Sunset") Review of Antidumping Order on Certain Uncoated Paper from Australia: Domestic Industry's Substantive Response to Notice of Initiation," dated March 1, 2021 (Substantive Response—Australia); "First Five-Year ("Sunset") Review of Antidumping Order on Certain Uncoated Paper from Brazil: Domestic Industry's Substantive Response to Notice of Initiation," dated March 1, 2021 (Substantive Response—Brazil); "First Five-Year ("Sunset") Review of Antidumping Order on Certain Uncoated Paper from the People's Republic of China: Domestic Industry's Substantive Response to Notice of Initiation," dated March 1, 2021 (Substantive Response—China); "First Five-Year ("Sunset") Review of Antidumping Order on Certain Uncoated Paper from Indonesia: Domestic Industry's Substantive Response to Notice of Initiation," dated March 1, 2021 (Substantive Response—Indonesia); and "First Five-Year ("Sunset") Review of Antidumping Order on Certain Uncoated Paper from Portugal: Domestic Industry's Substantive Response to Notice of Initiation," dated March 1, 2021 (Substantive Response—Portugal) (collectively, Substantive Response).

conducting expedited (120-day) sunset reviews of the *Orders*.

### Scope of the Orders

The scope of these orders includes uncoated paper in sheet form; weighing at least 40 grams per square meter but not more than 150 grams per square meter; that either is a white paper with a GE brightness level 3 of 85 or higher or is a colored paper; whether or not surface-decorated, printed (except as described below), embossed, perforated, or punched; irrespective of the smoothness of the surface; and irrespective of dimensions (Certain Uncoated Paper).

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) categories 4802.56.1000, 4802.56.2000, 4802.56.3000, 4802.56.4000, 4802.56.6000, 4802.56.7020, 4802.56.7040, 4802.57.1000, 4802.57.2000, 4802.57.3000, and 4802.57.4000. Some imports of subject merchandise may also be classified under 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.5000, 4802.62.6020, 4802.62.6040, 4802.69.1000, 4802.69.2000, 4802.69.3000, 4811.90.8050 and 4811.90.9080. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.<sup>7</sup>

### Analysis of Comments Received

All issues raised in these sunset reviews are addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice.<sup>8</sup> The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. A complete version of the Issues and Decision Memorandum can be accessed at <http://enforcement.trade.gov/frn/>.

<sup>7</sup> For a full description of the scope of the orders, see Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders on Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

<sup>8</sup> See Issues and Decision Memorandum.

### Final Results of Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the AD orders on uncoated paper from Australia, Brazil, China, Indonesia, and Portugal would be likely to lead to the continuation or recurrence of dumping, and that the magnitude of the margins likely to prevail are up to: 222.46 percent for Australia, 41.39 percent for Brazil, 149.00 percent for China, 17.46 percent for Indonesia, and 7.80 percent for Portugal.

### Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

### Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: May 25, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

### Appendix—List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. History of the *Orders*
- V. Legal Framework
- VI. Discussion of the Issues
  - 1. Likelihood of Continuation of Recurrence of Dumping
  - 2. Magnitude of the Margins Likely to Prevail
- VII. Final Results of Expedited First Sunset Review
- VIII. Recommendation

[FR Doc. 2021-11460 Filed 5-28-21; 8:45 am]

**BILLING CODE 3510-DS-P**

### DEPARTMENT OF COMMERCE

#### International Trade Administration

[A-533-875]

#### Fine Denier Polyester Staple Fiber From India: Final Results of Antidumping Duty Administrative Review; 2018–2019

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) has continued to base the dumping margin for the sole respondent under review, Reliance Industries Limited (RIL), on total adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act). The period of review (POR) is January 5, 2018 through June 30, 2019.

**DATES:** Applicable June 1, 2021.

#### FOR FURTHER INFORMATION CONTACT:

Paola Aleman Ordaz, 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) 482-4031.

#### SUPPLEMENTARY INFORMATION:

##### Background

Commerce (Commerce) published the preliminarily results of this administrative review on November 23, 2020.<sup>1</sup> In response to Commerce's invitation to comment on the *Preliminary Results*, RIL filed comments<sup>2</sup> and the petitioners<sup>3</sup> filed rebuttal comments on December 30, 2020 and January 6, 2021, respectively.<sup>4</sup> On March 16, 2021, Commerce extended the deadline for issuing the final results of this review from March 23, 2021 to May 24, 2021.<sup>5</sup>

Commerce conducted this administrative review in accordance with section 751(a) of the Act.

<sup>1</sup> See *Fine Denier Polyester Staple Fiber from India: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019*, 85 FR 74688 (November 23, 2020) (*Preliminary Results*).

<sup>2</sup> See RIL's Letter, "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Case Brief," dated December 30, 2020.

<sup>3</sup> Auriga Polymers Inc., DAK Americas LLC, and Nan Ya Plastics Corporation, America (collectively, the petitioners).

<sup>4</sup> See Petitioners' Letter, "Fine Denier Polyester Staple Fiber from India: Petitioners' Rebuttal Brief," dated January 6, 2021.

<sup>5</sup> See Memorandum, "Fine Denier Polyester Staple Fiber from India: Extension of Deadline for Final Results of Antidumping Duty Administration Review," dated March 16, 2021.

## Scope of the Order

The product covered by the scope of the antidumping duty order for this proceeding is fine denier polyester staple fiber (fine denier PSF) from India. For a complete description of the scope, see the Issues Decision Memorandum.<sup>6</sup>

## Analysis of the Comments Received

We addressed all issues raised in the case and rebuttal briefs submitted by parties in this review in the Issues and Decision Memorandum. A list of the sections in the Issues and Decision Memorandum is in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users

at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn/>.

## Changes Since the Preliminary Results

We calculated the cash deposit rate for RIL by offsetting its final dumping margin by the export subsidy rate calculated for RIL in the most recently completed segment of the companion countervailing duty (CVD) proceeding rather than offsetting it by the export subsidy rate calculated for RIL in the investigation in the companion CVD proceeding. We made no other changes since the *Preliminary Results*.

## Use of Adverse Facts Available

Pursuant to sections 776(a) and 776(b) of the Act, Commerce continues to base

RIL's dumping margin on total AFA because it withheld information requested for sales and cost reconciliations, did not provide accurate control numbers, as requested by Commerce and in conformity with Commerce's instructions, and did not provide requested information regarding companies owned by family members. We have continued to use an AFA rate of 21.43 percent, which is the AFA rate applied to RIL in the less-than-fair-value investigation in this proceeding.<sup>7</sup>

## Final Results of the Review

We are assigning the following dumping margin to the firm listed below for the period January 5, 2018 through June 30, 2019:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate adjusted for subsidy offset (percent)
Reliance Industries Limited .....	21.43	19.89

## Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with final results of an administrative review within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, because Commerce applied total AFA to the mandatory respondent under review in accordance with section 776 of the Act, there are no calculations to disclose.

## Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. 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 shipments of fine denier PSF from India entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice of the final results of this administrative review in the **Federal Register**, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for RIL will be equal to the cash deposit rate listed for RIL in the table above; (2) for merchandise exported by manufacturers or exporters not covered by this review, but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recently completed segment of the

proceeding for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 14.67 percent *ad valorem*, the all-others cash deposit rate established in the less-than-fair-value investigation.<sup>8</sup> These cash deposit requirements, when imposed, shall remain in effect until further notice.

## Notification to Importers

This notice serves as a final 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 Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information

<sup>6</sup> See Memorandum, "Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Fine Denier Polyester Staple Fiber from India; 2018–2019," dated

concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

<sup>7</sup> See *Fine Denier Polyester Staple Fiber from India: Final Affirmative Antidumping*

*Determination of Sales at Less Than Fair Value*, 83 FR 24737 (May 30, 2018), and accompanying Issues and Decision Memorandum (*Final Determination*).

<sup>8</sup> See *Final Determination*, 83 FR at 24737.

disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

#### Notification to Interested Parties

We are issuing and publishing these final results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 24, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

#### Appendix

##### List of Sections in the Issues Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Issues
  - Comment 1: Whether Commerce Should Continue to Apply Total AFA
  - A. Reconciliations
  - B. CONNUMs
  - C. Affiliations
- V. Recommendation

[FR Doc. 2021-11463 Filed 5-28-21; 8:45 am]

**BILLING CODE 3510-DS-P**

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

**[RTID 0648-XB085]**

##### 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 (MAFMC's) Northeast Trawl Advisory Panel (NTAP) Working Group will hold a public meeting.

**DATES:** The meeting will be held on Friday, June 18, 2021, from 1 p.m. to 3 p.m. For agenda details, see

##### SUPPLEMENTARY INFORMATION.

**ADDRESSES:** The meeting will be held via webinar. Details on the proposed agenda, webinar listen-in access, and briefing materials will be posted at the MAFMC's website: [www.mafmc.org](http://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](http://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 this meeting is for the NTAP Working Group to discuss (1) objectives of the restrictor cable research, (2) scope and timing of the research, and (3) prepare documentation for reporting out to the full panel.

#### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Collins at the Mid-Atlantic Council Office, (302) 526-5253, at least 5 days prior to the meeting date.

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

Dated: May 26, 2021.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021-11449 Filed 5-28-21; 8:45 am]

**BILLING CODE 3510-22-P**

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

**[RTID 0648-XB137]**

##### Western Pacific Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Western Pacific Fishery Management Council (Council) will hold its 140th Scientific and Statistical Committee (SSC), Pelagic and International Standing Committee, Executive and Budget Standing Committee, and 186th Council meetings to take actions on fishery management issues in the Western Pacific Region.

**DATES:** The meetings will be held between June 15 and June 24, 2021. For specific times and agendas, see

##### SUPPLEMENTARY INFORMATION.

**ADDRESSES:** The meetings will be held by web conference via WebEx. Instructions for connecting to the web conference and providing oral public

comments will be posted on the Council website at [www.wpcouncil.org](http://www.wpcouncil.org). For assistance with the web conference connection, contact the Council office at (808) 522-8220.

The following venues will be the host sites for the 186th Council meeting: Cliff Pointe, 304 W O'Brien Drive, Hagatna, Guam; BRI Building Suite 205, Kopa Di Oru St., Garapan, Saipan, CNMI; and, Tedi of Samoa Building Suite 208B, Fagatogo Village, American Samoa.

**FOR FURTHER INFORMATION CONTACT:** Contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; phone: (808) 522-8220.

**SUPPLEMENTARY INFORMATION:** All times shown are in Hawaii Standard Time. The 140th SSC meeting will be held between 11 a.m. and 5 p.m. on June 15-17, 2021. The Pelagic and International Standing Committee will be held between 1 p.m. and 3 p.m. on June 21, 2021. The Executive and Budget Standing Committee meeting will be held between 3:30 p.m. and 5:30 p.m. on June 21, 2021. The 186th Council meeting will be held between 11 a.m. and 5 p.m. on June 22-24, 2021.

Please note that the evolving public health situation regarding COVID-19 may affect the conduct of the June Council and its associated meetings. At the time this notice was submitted for publication, the Council anticipated convening the Council meeting by web conference with host site locations in Guam, CNMI and American Samoa. Council staff will monitor COVID-19 developments and will determine the extent to which in-person public participation at host sites will be allowable consistent with applicable local and federal safety and health guidelines. If public participation will be limited to web conference only or on a first-come-first-serve basis consistent with applicable guidelines, the Council will post notice on its website at [www.wpcouncil.org](http://www.wpcouncil.org).

Agenda items noted as "Final Action" refer to actions that result in Council transmittal of a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the MSA. In addition to the agenda items listed here, the Council and its advisory bodies will hear recommendations from Council advisors. An opportunity to submit public comment will be provided throughout the agendas. The order in which agenda items are addressed may change and will be announced in advance at the Council meeting. The

meetings will run as late as necessary to complete scheduled business.

Background documents for the 186th Council meeting will be available at [www.wpcouncil.org](http://www.wpcouncil.org). Written public comments on final action items at the 186th Council meeting should be received at the Council office by 5 p.m. HST, June 18, 2021, and should be sent to Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, phone: (808) 522-8220 or fax: (808) 522-8226; or email: [info.wpcouncil@noaa.gov](mailto:info.wpcouncil@noaa.gov). Written public comments on all other agenda items may be submitted for the record by email throughout the duration of the meeting. Instructions for providing oral public comments during the meeting will be posted on the Council website. This meeting will be recorded (audio only) for the purposes of generating the minutes of the meeting.

#### **Agenda for the 140th Scientific and Statistical Committee Meeting**

*Tuesday, June 15, 2021, 11 a.m. to 5 p.m.*

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 139th SSC Meeting Recommendations
4. Report from Pacific Islands Fisheries Science Center Director
5. Program Planning and Research
  - A. Monitoring of the Commercial and Non-Commercial Uku Fishery
  - B. 2020 Annual Stock Assessment and Fishery Evaluation (SAFE) Report and Recommendations
    1. Archipelagic Report Overview and Highlights
    2. Pelagic Report Overview and Highlights
    - C. Standardized Bycatch Reporting Methodology Review (Action Item)
    - D. SSC Subgroup Report on Fisheries and Protected Species Resilience to Climate Change
    - E. SSC Three Year Plan
    - F. Public Comment
    - G. SSC Discussion and Recommendations
6. Protected Species
  - A. Developing Draft Tori Line Specifications for the Hawaii Deep-set Longline Fishery
  - B. SSC Working Group Issues Paper on Alternative Approaches to Reduce Impacts to False Killer Whales
  - C. Endangered Species Act (ESA) Integration of Section 7 under MSA
  - D. ESA Consultations for the Hawaii Deep-set Longline Fishery, American Samoa Longline Fishery,

- and Bottomfish Fisheries
- E. ESA and Marine Mammal Protection Act (MMPA) Updates
- F. Public Comment
- G. SSC Discussion and Recommendations

*Wednesday, June 16, 2021, 11 a.m. to 5 p.m.*

7. Pelagic Fisheries
  - A. Monte Carlo Analyses of Longline Mitigation Measures
  - B. Oceanic Whitetip Shark Working Group Update
  - C. Regulatory Amendment: Gear and Release Requirements to Improve Post-Hooking Survivorship of Oceanic Whitetip Sharks in the Longline Fisheries (Action Item)
  - D. MSA 304(i) Obligations for Western and Central Pacific Silky Shark
  - E. 2022 US Territorial Bigeye Tuna Catch/Effort Limit & Allocation Specifications (Action Item)
  - F. Monterey Bay Aquarium Seafood Watch Assessment of the Hawaii Longline Fisheries
  - G. Analyses of Pacific Island Longline Fisheries in 2020 Comprehensive Bycatch Assessment in US Fisheries
  - H. International Fisheries
    1. Preparations for Western Central Pacific Fisheries Commission (WCPFC) Science Committee
    2. Outcomes of WCPFC Tropical Tunas Workshop
    - I. Public Comment
    - J. SSC Discussion and Recommendations

*Thursday, June 17, 2021, 11 a.m. to 5 p.m.*

8. Other Business
  - A. National Standard 1 Technical Guidance Memorandum on Data Limited Stocks
  - B. Council Coordinating Committee Area-Based Management Working Group
  - C. September 14–16, 2021 SSC Meetings Dates
  9. Summary of SSC Recommendations to the Council

#### **Agenda for the Pelagic and International Standing Committee**

*Monday, June 21, 2021, 1 p.m. to 3 p.m.*

1. Oceanic Whitetip Shark Working Group Update & Monte Carlo Analyses of Longline Mitigation Measures
2. Regulatory Amendment: Gear and Release Requirements to Improve Post-Hooking Survivorship of Oceanic Whitetip Sharks in the Longline Fisheries (Final Action)
3. Territorial Bigeye Tuna Catch Limit and Allocations Pacific

- A. 2022 US Territorial Bigeye Tuna Catch/Effort Limit & Allocation Specifications (Final Action)
- B. Multi-Year US Territory Longline Bigeye Catch & Allocation Limits (Initial Action)

4. Potential Management for the Western and Central Pacific Silky Shark Under MSA 304(i) Obligations

5. Outcomes of WCPFC Tropical Tunas Workshop

6. Advisory Group Report and Recommendations

7. Other Issues

8. Public Comment

9. Discussion and Recommendations

#### **Agenda for the Executive and Budget Standing Committee**

*Monday, June 21, 2021, 3:30 p.m. to 5:30 p.m.*

1. Financial Reports
2. Administrative Reports
3. Report of the Council Coordination Committee Meeting
4. Council Family Changes
5. Meetings and Workshops
6. Other Issues
7. Public Comment
8. Discussion and Recommendations

#### **Agenda for the 186th Council Meeting**

*Tuesday, June 22, 2021, 11 a.m. to 5 p.m.*

1. Welcome and Introductions
2. Approval of the 186th Agenda
3. Approval of the 185th Meeting Minutes
4. Executive Director's Report
5. Agency Reports
  - A. National Marine Fisheries Service
    1. Pacific Islands Regional Office
    2. Pacific Islands Fisheries Science Center
  - B. NOAA Office of General Counsel
    - Pacific Islands Section
  - C. Enforcement
    1. U.S. Coast Guard
    2. NOAA Office of Law Enforcement
    3. NOAA Office of General Counsel Enforcement Section
  - D. U.S. State Department
  - E. U.S. Fish and Wildlife Service
  - F. Public Comment
  - G. Council Discussion and Action
6. Pelagic & International Fisheries
  - A. Oceanic Whitetip Sharks
    1. Oceanic Whitetip Shark Working Group Update & Monte Carlo Analyses of Longline Mitigation Measures
    2. Regulatory Amendment: Gear and Release Requirements to Improve Post-Hooking Survivorship of Oceanic Whitetip Sharks in the Longline Fisheries (Final Action)
    - B. Territorial Bigeye Tuna Catch Limit

and Allocations

1. 2022 US Territorial Bigeye Tuna Catch/Effort Limit & Allocation Specifications (Final Action)
2. Multi-Year US Territory Longline Bigeye Catch & Allocation Limits (Initial Action)
- C. Potential Management for the Western and Central Pacific Silky Shark Under MSA 304(i) Obligations
- D. Monterey Bay Aquarium Seafood Watch Assessment of the Hawaii Longline Fisheries
- E. International Fisheries
  1. Preparations for WCPFC Science Committee
  2. Outcomes of WCPFC Tropical Tunas Workshop
- F. Advisory Group Report and Recommendations
  1. Advisory Panel
  2. Pelagic Plan Team
  3. Fishing Industry Advisory Committee
  4. Non-Commercial Fishing Advisory Committee
  5. Scientific & Statistical Committee
  - G. Standing Committee Report and Recommendations
  - H. Public Comment
  - I. Council Discussion and Action

*Tuesday, June 22, 2021, 4:30 p.m. to 5 p.m.*

Public Comment on Non-Agenda Items

*Wednesday, June 23, 2021, 11 a.m. to 5 p.m.*

7. Protected Species
  - A. Developing Draft Tori Line Specifications for the Hawaii Deep-set Longline Fishery
  - B. SSC Working Group Issues Paper on Alternative Approaches to Reduce Impacts to False Killer Whales
  - C. Integration of ESA Section 7 Under MSA
  - D. ESA Consultations for the Hawaii Deep-set Longline Fishery, American Samoa Longline Fishery, and Bottomfish Fisheries
  - E. ESA and MMPA Updates
  - F. Coral Critical Habitat Working Group Update
  - G. Advisory Group Report and Recommendations
    1. Advisory Panel
    2. Fishing Industry Advisory Committee
    3. Non-Commercial Fishing Advisory Committee
    4. Scientific & Statistical Committee
    - H. Public Comment
    - I. Council Discussion and Action
  8. American Samoa Archipelago
    - A. Motu Lipoti
    - B. Department of Marine and Wildlife Resources Report
    - C. American Samoa Marine Conservation Plan (Action Item)
    - D. American Samoa Bottomfish Fisheries
      1. American Samoa Bottomfish Rebuilding Plan (Final Action)
      2. American Samoa Bottomfish Community Development Program Request
      - E. Advisory Group Report and Recommendations
        1. Advisory Panel
        2. Fishing Industry Advisory Committee
        3. Non-Commercial Fishing Advisory Committee
        4. Scientific & Statistical Committee
        - F. Public Comment
        - G. Council Discussion and Action
      9. Mariana Archipelago
        - A. Guam
          1. Isla Informe
          2. Department of Agriculture/Division of Aquatic and Wildlife Resources Report
          3. Guam Bottomfish Fishery Management
          - A. Guam Bottomfish Rebuilding Plan (Final Action)
          - B. Guam Territorial Bottomfish Fishery Management Plan
          - B. CNMI
            1. Arongol Falú
            2. DLNR/DFW Report
          - C. Advisory Group Report and Recommendations
            1. Advisory Panel
            2. Fishing Industry Advisory Committee
            3. Non-Commercial Fishing Advisory Committee
            4. Scientific & Statistical Committee
            - D. Public Comment
            - E. Council Discussion and Action

*Thursday, June 24, 2021, 11 a.m. to 5 p.m.*

      10. Program Planning and Research
        - A. National Standard 1 Technical Guidance Memorandum on Data Limited Stocks
        - B. Draft Electronic Monitoring Procedural Directive on Applying Information Law
        - C. National Legislative Report
          1. Update on Congressional Actions
          2. Update on Executive Orders
            - a. E.O.14008 on CCC Area-Based Management Working Group
            - b. E.O. 13985 on Advancing Racial Equity and Support for Underserved Communities
          - D. Standardized Bycatch Reporting Methods & FEP Amendments for Updating Consistency (Initial Action)
          - E. Draft 2020 Annual Stock Assessment and Fishery Evaluation
      11. Hawai'i Archipelago & Pacific Remote Island Areas (PRIA)
        - A. Moku Pepa
        - B. DLNR/DAR Report
        - C. Main Hawaiian Island Deep 7 Bottomfish Fishery Annual Catch Limits for Fishing Years 2021–23 (Final Action)
        - D. Monitoring and Managing the Hawaii Uku Fishery
        - E. Proposed National Marine Sanctuary for the Northwestern Hawaiian Islands
        - F. Advisory Group Report and Recommendations
          1. Advisory Panel
          2. Archipelagic Plan Team
          3. Fishing Industry Advisory Committee
          4. Non-Commercial Fishing Advisory Committee
          5. Scientific & Statistical Committee
          - G. Public Comment
          - H. Council Discussion and Action
      12. Administrative Matters
        - A. Financial Reports
        - B. Administrative Reports
        - C. Report of the Council Coordination Committee Meeting
        - D. Council Family Changes
        - E. Meetings and Workshops
        - F. Standing Committee Report and Recommendations
        - G. Public Comment
        - H. Council Discussion and Action
      13. Other Business
 

Non-emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 186th meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after

publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

### Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522-8220 (voice) or (808) 522-8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 26, 2021.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021-11450 Filed 5-28-21; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF EDUCATION

[Docket No.: ED-2021-SCC-0048]

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Private School Universe Survey (PSS) 2019-20 and 2021-22

**AGENCY:** Institute of Educational Sciences (IES), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

**DATES:** Interested persons are invited to submit comments on or before July 1, 2021.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this information collection request by selecting “Department of Education” under “Currently Under Review,” then check “Only Show ICR for Public Comment” checkbox. Comments may also be sent to [ICDocketmgr@ed.gov](mailto:ICDocketmgr@ed.gov).

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Carrie Clarady, 202-245-6347.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general

public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

**Title of Collection:** Private School Universe Survey (PSS) 2019-20 and 2021-22.

**OMB Control Number:** 1850-0641.

**Type of Review:** An extension without change of a currently approved collection.

**Respondents/Affected Public:** Individuals and Households.

**Total Estimated Number of Annual Responses:** 32,677.

**Total Estimated Number of Annual Burden Hours:** 6,577.

**Abstract:** The Private School Universe Survey (PSS) is conducted by the National Center for Education Statistics (NCES) to collect basic information from the universe of private elementary and secondary schools in the United States. The PSS is designed to gather biennial data on the total number of private schools, teachers, and students, along with a variety of related data, including: Religious orientation; grade-levels taught and size of school; length of school year and of school day; total student enrollment by gender (K-12); number of high school graduates; whether a school is single-sexed or coeducational; number of teachers employed; program emphasis; and existence and type of its kindergarten program. The PSS includes all schools that are not supported primarily by public funds, that provide classroom instruction for one or more of grades K-12 or comparable ungraded levels, and that have one or more teachers. The PSS

is also used to create a universe list of private schools for use as a sampling frame for NCES surveys of private schools. The request to conduct the 2019-20 and 2021-22 PSS data collections, and the 2021-22 PSS list frame building operations, was approved in April 2019 (OMB# 1850-0641 v.9), and the last change was approved in June 2020 (OMB#1850-0641 v.12). This submission is materially unchanged from previous submissions and is submitted solely to request an extension for data collection activities. The current OMB clearance expires in April 2022, but data collection activities are currently scheduled to extend into late May 2022. There are no changes to burden or cost to the federal government.

Dated: May 26, 2021.

**Juliana Pearson,**

*PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2021-11439 Filed 5-28-21; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

[Docket No.: ED-2021-SCC-0047]

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; U.S. Department of Education Pre-Authorized Debit Account Brochure and Application

**AGENCY:** Federal Student Aid (FSA), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

**DATES:** Interested persons are invited to submit comments on or before July 1, 2021.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this information collection request by selecting “Department of Education” under “Currently Under Review,” then check “Only Show ICR for Public Comment” checkbox. Comments may also be sent to [ICDocketmgr@ed.gov](mailto:ICDocketmgr@ed.gov).

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection

activities, please contact Beth Grebeldinger, 202-377-4018.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* U.S. Department of Education Pre-Authorized Debit Account Brochure and Application.

*OMB Control Number:* 1845-0025.

*Type of Review:* An extension without change of a currently approved collection.

*Respondents/Affected Public:* Individuals and Households.

*Total Estimated Number of Annual Responses:* 1,667.

*Total Estimated Number of Annual Burden Hours:* 138.

*Abstract:* The Pre-authorized Debit Account Brochure and Application (PDA Application) serves as the means by which an individual with a defaulted federal education debt (student loan or grant overpayment) that is held by the U.S. Department of Education (ED) requests and authorizes the automatic debiting of payments toward satisfaction of the debt from the borrower's checking or savings account. The PDA Application explains the automatic debiting process and collects the individual's authorization for the automatic debiting and the bank account information needed by ED to debit the individual's account.

Dated: May 26, 2021.

**Juliana Pearson,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2021-11453 Filed 5-28-21; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER21-1990-000]**

#### **Blackwell Wind Energy, 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 Blackwell Wind Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 14, 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 TTY, (202) 502-8659.

Dated: May 25, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021-11470 Filed 5-28-21; 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:* RP21-820-000.

*Applicants:* El Paso Natural Gas Company, L.L.C.

*Description:* Request for Limited Waiver of El Paso Natural Gas Company.

*Filed Date:* 5/11/21.

*Accession Number:* 20210511-5132.

*Comments Due:* 5 p.m. ET 5/28/21.

*Docket Numbers:* RP21-734-001.

*Applicants:* Sea Robin Pipeline Company, LLC.

*Description:* Tariff Amendment: Amendment to Revised Fuel Percentage to be effective 7/1/2021.

*Filed Date:* 5/24/21.

*Accession Number:* 20210524-5113.

*Comments Due:* 5 p.m. ET 6/7/21.

*Docket Numbers:* RP21-835-000.

*Applicants:* Algonquin Gas Transmission, LLC.

*Description:* § 4(d) Rate Filing: Negotiated Rate—Northern Utilities 510939 to Emera eff 5-22-21 to be effective 5/22/2021.

*Filed Date:* 5/24/21.

*Accession Number:* 20210524-5000.

*Comments Due:* 5 p.m. ET 6/7/21.  
*Docket Numbers:* RP21-836-000.  
*Applicants:* Northern Natural Gas Company.

*Description:* Compliance filing 20210524 DDVC Tariff Waiver.  
*Filed Date:* 5/24/21.  
*Accession Number:* 20210524-5111.

*Comments Due:* 5 p.m. ET 6/7/21.  
*Docket Numbers:* RP21-837-000.  
*Applicants:* Tennessee Gas Pipeline Company, L.L.C.

*Description:* § 4(d) Rate Filing; PAL NRA Engie SP367255 & J.P. Morgan SP367264 to be effective 6/1/2021.

*Filed Date:* 5/24/21.  
*Accession Number:* 20210524-5148.  
*Comments Due:* 5 p.m. ET 6/7/21.  
 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: May 25, 2021.

**Debbie-Anne A. Reese,**  
*Deputy Secretary.*

[FR Doc. 2021-11468 Filed 5-28-21; 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 exempt wholesale generator filings:

*Docket Numbers:* EG21-160-000.  
*Applicants:* TG East Wind Project LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of TG East Wind Project LLC.

*Filed Date:* 5/24/21.  
*Accession Number:* 20210524-5193.  
*Comments Due:* 5 p.m. ET 6/14/21.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER20-2878-012.  
*Applicants:* Pacific Gas and Electric Company.

*Description:* Compliance filing; Compliance Filing WDT3 interim rates to be effective 6/1/2021.

*Filed Date:* 5/24/21.  
*Accession Number:* 20210524-5150.  
*Comments Due:* 5 p.m. ET 6/14/21.  
*Docket Numbers:* ER21-625-001.  
*Applicants:* New York Independent System Operator, Inc.

*Description:* Compliance filing; Compliance notice of effective date—SENY reserve enhancements to be effective 6/8/2021.

*Filed Date:* 5/25/21.  
*Accession Number:* 20210525-5131.  
*Comments Due:* 5 p.m. ET 6/15/21.  
*Docket Numbers:* ER21-892-001.  
*Applicants:* New York Independent System Operator, Inc.

*Description:* Compliance filing; Compliance Notice-Effective Date Enhanced Solar Resource Operation to be effective 6/8/2021.

*Filed Date:* 5/25/21.  
*Accession Number:* 20210525-5146.  
*Comments Due:* 5 p.m. ET 6/15/21.  
*Docket Numbers:* ER21-1198-000.  
*Applicants:* Pay Less Energy LLC.

*Description:* Report Filing; Refund Report (ER21-1198) to be effective N/A.  
*Filed Date:* 5/24/21.  
*Accession Number:* 20210524-5122.  
*Comments Due:* 5 p.m. ET 6/14/21.  
*Docket Numbers:* ER21-1304-001.  
*Applicants:* California Independent System Operator Corporation.

*Description:* Compliance filing; 2021-05-25 Reconciliation Filing—Historical Records Update to be effective 2/20/2020.

*Filed Date:* 5/25/21.  
*Accession Number:* 20210525-5119.  
*Comments Due:* 5 p.m. ET 6/15/21.  
*Docket Numbers:* ER21-1545-001.  
*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Amendment; Errata to correct metadata in ER21-1545-000, SA No. 5523; Queue No. AE1-162 to be effective 10/29/2019.

*Filed Date:* 5/24/21.  
*Accession Number:* 20210524-5104.  
*Comments Due:* 5 p.m. ET 6/14/21.  
*Docket Numbers:* ER21-1993-000.

*Applicants:* Upper Missouri G. & T. Electric Cooperative, Inc.

*Description:* § 205(d) Rate Filing; Revised Rate Schedules FERC Nos. 1, 5, 7, 8, and 9 to be effective 5/25/2021.

*Filed Date:* 5/24/21.  
*Accession Number:* 20210524-5171.

*Comments Due:* 5 p.m. ET 6/14/21.  
*Docket Numbers:* ER21-1994-000.

*Applicants:* El Paso Electric Company.  
*Description:* § 205(d) Rate Filing; Service Agreement No. 353, LGIA with National Grid Renewables to be effective 4/21/2021.

*Filed Date:* 5/24/21.  
*Accession Number:* 20210524-5176.  
*Comments Due:* 5 p.m. ET 6/14/21.  
*Docket Numbers:* ER21-1995-000.  
*Applicants:* Salt Creek Solar, LLC.  
*Description:* Request for Temporary Tariff Waiver, et al. of Salt Creek Solar, LLC.

*Filed Date:* 5/24/21.  
*Accession Number:* 20210524-5205.  
*Comments Due:* 5 p.m. ET 6/7/21.  
*Docket Numbers:* ER21-1996-000.  
*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing; Original WMPA, Service Agreement No. 6069; Queue No. AD2-199 to be effective 4/26/2021.

*Filed Date:* 5/25/21.  
*Accession Number:* 20210525-5075.  
*Comments Due:* 5 p.m. ET 6/15/21.  
*Docket Numbers:* ER21-1997-000.  
*Applicants:* Entergy Arkansas, LLC.  
*Description:* § 205(d) Rate Filing; MSS-4 Replacement Tariff-Waterford 3 Decommissioning to be effective 8/1/2021.

*Filed Date:* 5/25/21.  
*Accession Number:* 20210525-5082.  
*Comments Due:* 5 p.m. ET 6/15/21.  
*Docket Numbers:* ER21-1998-000.  
*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing; Original WMPA, Service Agreement No. 6070; Queue No. AD2-058 to be effective 4/26/2021.

*Filed Date:* 5/25/21.  
*Accession Number:* 20210525-5096.  
*Comments Due:* 5 p.m. ET 6/15/21.  
*Docket Numbers:* ER21-1999-000.  
*Applicants:* Midcontinent

Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing; 2021-05-25\_SA 3568 NIPSCO—NEET Certificate of Concurrence to be effective 4/2/2021.

*Filed Date:* 5/25/21.  
*Accession Number:* 20210525-5108.  
*Comments Due:* 5 p.m. ET 6/15/21.  
*Docket Numbers:* ER21-2000-000.  
*Applicants:* East Coast Power & Gas of New Jersey, LLC.

*Description:* Notice of Cancellation of Market-Based Rate Tariff of East Coast Power & Gas of New Jersey, LLC.

*Filed Date:* 5/25/21.  
*Accession Number:* 20210525-5113.  
*Comments Due:* 5 p.m. ET 6/15/21.  
 Take notice that the Commission received the following qualifying facility filings:

*Docket Numbers:* QF21-909-000.

*Applicants:* Linden Renewable Energy, LLC.

*Description:* Form 556 of Linden Renewable Energy, LLC.

*Filed Date:* 5/25/21.

*Accession Number:* 20210525-5174.

*Comments Due:* Non-Applicable.

Take notice that the Commission received the following electric reliability filings:

*Docket Numbers:* RR19-7-002.

*Applicants:* North American Electric Reliability Corporation.

*Description:* Compliance Filing of the North American Electric Reliability Corporation In Response To Order On Compliance Filings For The Five-Year Performance Assessment.

*Filed Date:* 5/19/21.

*Accession Number:* 20210519-5196.

*Comments Due:* 5 p.m. ET 6/9/21.

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: May 25, 2021.

**Debbie-Anne A. Reese,**  
*Deputy Secretary.*

[FR Doc. 2021-11471 Filed 5-28-21; 8:45 am]

**BILLING CODE 6717-01-P**

accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 14, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at [www.ferc.gov](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](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Dated: May 25, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021-11469 Filed 5-28-21; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 553-238]

### City of Seattle, Washington; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application submitted by the City of Seattle, Washington to construct a replacement fuel dock and associated infrastructure at Diablo Lake at the Skagit River Project No. 553. The Skagit River Project is located on the Skagit River in Snohomish, Skagit, and Whatcom counties, Washington. The project occupies a portion of the Ross Lake National Recreation Area administered by the U.S. National Park Service and the Mount Baker National Forest administered by the U.S. Forest Service.

An environmental assessment (EA) has been prepared as part of staff's review of the proposal.<sup>1</sup> The EA contains Commission staff's analysis of the probable environmental effects of the proposed action and concludes that approval of the proposal, with Commission staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA may be viewed on the Commission's website at [www.ferc.gov](http://www.ferc.gov) using the "eLibrary" link. Enter the docket number (P-553) 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,

<sup>1</sup> On July 16, 2020, the Council on Environmental Quality (CEQ) issued a final rule, *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act* (Final Rule, 85 FR 43,304), which was effective as of September 14, 2020; however, the NEPA review of this project was in process at that time and was prepared pursuant to CEQ's 1978 NEPA regulations.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER21-1988-000]

### SP Garland Solar Storage, 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 proceeding of SP Garland Solar Storage, LLC's application for market-based rate authority, with an

2020. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1-866-208-3372, or for TTY, (202) 502-8659.

Any comments should be filed within 30 days from the issuance date of this notice. The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. If unable to be filed electronically, documents may be paper-filed. Paper filings made using the U.S. Postal Service should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P-553-238. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments.

Dated: May 25, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021-11459 Filed 5-28-21; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER21-1989-000]

#### SP Tranquillity Solar Storage, 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 proceeding of SP Tranquillity Solar Storage, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and

385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 14, 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](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Dated: May 25, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021-11472 Filed 5-28-21; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RM98-1-000]

#### Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <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. For

assistance, please contact FERC Online Support at *FERCOnlineSupport@*

*ferc.gov* or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Docket Nos.	File date	Presenter or requester
<b>Prohibited:</b>		
1. P-1494-438 .....	5-13-2021	FERC Staff <sup>1</sup> .
2. P-1494-438 .....	5-13-2021	FERC Staff <sup>2</sup> .
3. P-1494-438 .....	5-14-2021	FERC Staff <sup>3</sup> .
4. P-1494-438 .....	5-14-2021	FERC Staff <sup>4</sup> .
5. P-1494-438 .....	5-14-2021	FERC Staff <sup>5</sup> .
6. P-1494-438 .....	5-17-2021	FERC Staff <sup>6</sup> .
7. P-1494-438 .....	5-17-2021	FERC Staff <sup>7</sup> .
8. P-1494-438 .....	5-18-2021	FERC Staff <sup>8</sup> .
9. P-1494-438 .....	5-19-2021	FERC Staff <sup>9</sup> .
10. P-1494-438 .....	5-24-2021	FERC Staff <sup>10</sup> .
11. P-1494-438 .....	5-24-2021	FERC Staff <sup>11</sup> .
<b>Exempt:</b>		
NONE.		

<sup>1</sup> Emailed comments dated 5/12/2021 from Leonid Volovnik and 43 other individuals.

<sup>2</sup> Emailed comments dated 5/13/2021 from Evelyn Parker.

<sup>3</sup> Emailed comments dated 5/12/2021 from Marce Walsh and 47 other individuals.

<sup>4</sup> Emailed comments dated 5/13/2021 from Eva Cantu and 11 other individuals.

<sup>5</sup> Emailed comments dated 5/14/2021 from Jante Delaney and 3 other individuals.

<sup>6</sup> Emailed comments dated 5/15/2021 from Joanne Groshardt and 3 other individuals.

<sup>7</sup> Emailed comments dated 5/17/2021 from Carol Shelton.

<sup>8</sup> Emailed comments dated 5/17/2021 from Sandy Goncarovs.

<sup>9</sup> Emailed comments dated 5/18/2021 from Kathy Nix.

<sup>10</sup> Emailed comments dated 5/23/2021 from Ron Drees.

<sup>11</sup> Emailed comments dated 5/18/2021 from Ed Perry.

Dated: May 25, 2021.

**Debbie-Anne A. Reese,  
Deputy Secretary.**

[FR Doc. 2021-11467 Filed 5-28-21; 8:45 am]

**BILLING CODE 6717-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-10019-14-OMS]**

### Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of North Dakota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the Environmental Protection Agency's (EPA) approval of the State of North Dakota's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

**DATES:** EPA approves the authorized program revisions/modifications as of June 1, 2021.

#### FOR FURTHER INFORMATION CONTACT:

Shirley M. Miller, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566-2908, *miller.shirley@epa.gov*.

**SUPPLEMENTARY INFORMATION:** On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR)

was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On January 21, 2020, the North Dakota Department of Environmental Quality (NDDEQ) submitted an application titled Cloud Hosted SLEIS from Windsor Solutions for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed NDDEQ's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve North Dakota's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR parts 64 and 70 is being published in the **Federal Register**:

**Part 70: State Operating Permit Programs (Clean Air Act Title V)  
Reporting under CFR 64 & 70**

NDDEQ was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: May 4, 2021.

**Jennifer Campbell,**

*Director, Office of Information Management.*

[FR Doc. 2021-11415 Filed 5-28-21; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-10022-06-OMS]

**Cross-Media Electronic Reporting: Authorized Program Revision Approval, District of Columbia****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** This notice announces the Environmental Protection Agency's (EPA) approval of the District of Columbia's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

**DATES:** EPA approves the authorized program revisions/modifications as of June 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Shirley M. Miller, CROMERR Program Manager, U.S. Environmental Protection Agency, Office of Information Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566-2908, [miller.shirley@epa.gov](mailto:miller.shirley@epa.gov).

**SUPPLEMENTARY INFORMATION:** On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of Title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application

and will use electronic document receiving systems that meet the applicable subpart D requirements.

On February 17, 2021, the District of Columbia Department of Energy and Environment (DOEE) submitted an application titled DC UST Portal for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed DOEE's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the applications met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve the District of Columbia's request to revise/modify its following EPA-authorized programs under 40 CFR parts 281, to allow electronic reporting under 40 CFR part 280 is being published in the **Federal Register**:

Part 281: Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST) Reporting under CFR 280

DOEE was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: May 25, 2021.

**Jennifer Campbell**,  
Director, Office of Information Management.  
[FR Doc. 2021-11413 Filed 5-28-21; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-10024-37-OAR]

**Request for Nominations for Mobile Sources Technical Review Subcommittee (MSTRS)****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice; request for nominations for Mobile Sources Technical Review Subcommittee (MSTRS).

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to its Mobile Sources Technical Review Subcommittee (MSTRS). Vacancies are anticipated to be filled by November 15, 2021. Sources in addition to this **Federal Register** Notice may also be utilized in the solicitation of nominees.

**DATES:** Nominations must be postmarked or emailed by August 2, 2021.

**ADDRESSES:** Submit nominations in writing to: Julia Burch, Designated Federal Officer, Office of Transportation and Air Quality, U.S. Environmental Protection Agency (6401A), 1200 Pennsylvania Avenue NW, Washington, DC 20460.

You may also email nominations with subject line MSTRS2021 to [mstrs@epa.gov](mailto:mstrs@epa.gov).

**FOR FURTHER INFORMATION CONTACT:** Julia Burch, Designated Federal Officer, U.S. EPA; telephone: (202) 564-0961; email: [burch.julia@epa.gov](mailto:burch.julia@epa.gov).

**SUPPLEMENTARY INFORMATION:****Background**

The MSTRS is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92-463. The MSTRS provides the Clean Air Act Advisory Committee (CAAAC) with independent advice, counsel and recommendations on the scientific and technical aspects of programs related to mobile source air pollution and its control.

Through its expert members from diverse stakeholder groups and from its various workgroups, the subcommittee reviews and addresses a wide range of developments, issues and research areas such as emissions modeling, emission standards and standard setting, air toxics, innovative and incentive-based transportation policies, onboard diagnostics, heavy-duty engines, diesel retrofit, and fuel quality. The Subcommittee's website is at: <http://www.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac>.

Members are appointed by the EPA Administrator for three-year terms with the possibility of reappointment to a second term. The MSTRS usually meets two times annually and the average workload for the members is approximately 5 to 10 hours per month. EPA provides reimbursement for travel and other incidental expenses associated with official government business for members who qualify.

EPA is seeking nominations from representatives of nonfederal interests such as:

- Future transportation options and shared mobility interests
- Community and/or environmental justice interests
- Mobile source emission modeling interests
- Transportation and supply chain shippers
- Marine and inland port interests

- Environmental advocacy groups
- State and local government interests
- EPA values and welcomes diversity. To obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

In selecting members, we will consider technical expertise, coverage of broad stakeholder perspectives, diversity, and the needs of the subcommittee.

The following criteria will be used to evaluate nominees:

- The background and experiences that would help members contribute to the diversity of perspectives on the committee (e.g., geographic, economic, social, cultural, educational, and other considerations);
- Experience in policy engagement across a range of mobility source transportation topics;
- Experience working with future transportation options and shared mobility;
- Experience working with the modeling of mobile source emissions;
- Experience working with producers of passenger cars, engines and trucks, engine and equipment manufacturing;
- Experience working with fuel or renewable fuel producers;
- Experience working with oil refiners, distributors and retailers of mobile source fuels;
- Experience working with clean energy producers;
- Experience working with agricultural producers (corn and other crop products), distillers, processors and shippers of biofuels;
- Experience working with emission control manufacturers, catalyst and filter manufacturers;
- Experience working for State, tribal, or local environmental agencies or State Air Pollution Control Agencies;
- Experience working for environmental advocacy groups;
- Experience working for environmental and/or community groups;
- Experience working with supply chain logistics and goods movement;
- Experience working with marine port interests;
- Experience in working at the national level on local governments issues;
- Experience in working on local issues at the national level;
- Demonstrated experience with environmental, public health, and sustainability issues;
- Executive management level experience with membership in broad-based networks;

- Excellent interpersonal, oral and written communication and consensus-building skills;
- Ability to volunteer time to attend meetings two times a year, participate in teleconference and webinar meetings, attend listening sessions with the Administrator or other senior-level officials, develop policy recommendations to the Administrator, and prepare reports and advice letters.

Nominations must include a resume and a short biography describing the professional and educational qualifications of the nominee, as well as the nominee's current business address, email address, and daytime telephone number. Interested candidates may self-nominate.

To help the Agency in evaluating the effectiveness of its outreach efforts, please tell us how you learned of this opportunity.

Please be aware that EPA's policy is that, unless otherwise prescribed by statute, members generally are appointed to three-year terms.

**Julia Burch,**

*Designated Federal Officer, Office of Transportation and Air Quality, U.S. Environmental Protection Agency.*

[FR Doc. 2021-11440 Filed 5-28-21; 8:45 am]

**BILLING CODE 6560-50-P**

(70 FR 59848) and codified as Part 3 of Title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On August 19, 2020, the Alabama Department of Environmental Management (ADEM) submitted an application titled Alabama Web Portal for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed ADEM's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Alabama's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR parts 60, 63, 70, 123, 142, 145, 403, 239, 271, 281, and Emergency Planning and Community Right-to-Know Act (SARA Title III/CRTK) is being published in the **Federal Register**:

Part 60: Standards of Performance for New Stationary Sources (NSPS/CAR/ Clean Air Act Title III) Reporting under CFR 60 & 65

Part 63: National Emission Standards for Hazardous Air Pollutants for Source

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-10022-09-OMS]**

### Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Alabama

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the Environmental Protection Agency's (EPA) approval of the State of Alabama's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

**DATES:** EPA approves the authorized program revisions/modifications as of June 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Shirley M. Miller, CROMERR Program Manager, U.S. Environmental Protection Agency, Office of Information Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566-2908, [miller.shirley@epa.gov](mailto:miller.shirley@epa.gov).

**SUPPLEMENTARY INFORMATION:** On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register**

Categories (NESHAP MACT/Clean Air Act Title III) Reporting under CFR 61, 63 & 65

Part 70: State Operating Permit Programs (Clean Air Act Title V) Reporting under CFR 64 & 70

Part 123: EPA-Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES) Reporting under CFR 122 & 125

Part 142: National Primary Drinking Water Regulations Implementation (NPDWR) Reporting under CFR 141

Part 145: State Underground Injection Control Programs (UIC) Reporting under CFR 144 & 146

Part 403: General Pretreatment Regulations for Existing and New Sources of Pollution Reporting under CFR 403–471

Part 239: Requirements for State Permit Program Determination of Adequacy (RCRA Subtitle C) Reporting under CFR 240–259

Part 271: Requirements for Authorization of State Hazardous Waste Programs (RCRA Subtitle C) Reporting under CFR 260–270, 272–279

Part 281: Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST) Reporting under CFR 280

Emergency Planning and Community Right-to-Know Act (SARA Title III/ CTRK) Reporting under EPCRA Sections 302–304, 311–313

ADEM was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: May 4, 2021.

**Jennifer Campbell,**  
Director, Office of Information Management.  
[FR Doc. 2021–11414 Filed 5–28–21; 8:45 am]

**BILLING CODE 6560–50–P**

## EXPORT-IMPORT BANK

**[Public Notice 2021–6009]**

### Agency Information Collection Activities: Comment Request

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Submission for OMB review and comments request.

**SUMMARY:** The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by

the Paperwork Reduction Act of 1995. The collection provides EXIM staff with the information necessary to monitor the borrower's payments for exported goods covered under its short and medium-term export credit insurance policies. It also alerts EXIM staff of defaults, so they can manage the portfolio in an informed manner.

**DATES:** Comments must be received on or before August 2, 2021 to be assured of consideration.

**ADDRESSES:** Comments may be submitted electronically on [www.regulations.gov](http://www.regulations.gov) or by mail to Mia Johnson, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

Form can be viewed at <https://www.exim.gov/sites/default/files/public/pending/eib92-27.pdf>.

**SUPPLEMENTARY INFORMATION: Title and Form Number:** EIB 92–27 Report of Overdue Accounts Under Short-Term Policies.

**OMB Number:** 3048–0027.

**Type of Review:** Regular.

**Need and Use:** The collection provides EXIM staff with the information necessary to monitor the borrower's payments for exported goods covered under its short- and medium-term export credit insurance policies. It also alerts Ex-Im Bank staff of defaults, so they can manage the portfolio in an informed manner.

**Affected Public:** This form affects entities involved in the export of U.S. goods and services.

**Annual Number of Respondents:** 745.

**Estimated Time per Respondent:** 15 minutes.

**Annual Burden Hours:** 186.25 hours.

**Frequency of Reporting or Use:** Monthly.

**Government Expenses:**

**Reviewing Time per Year:** 186.25 hours.

**Average Wages per Hour:** \$42.50.

**Average Cost per Year:** \$7,915.62.

**Benefits and Overhead:** 20%.

**Total Government Cost:** \$9,498.75.

**Bassam Doughman,**

**IT Specialist.**

[FR Doc. 2021–11419 Filed 5–28–21; 8:45 am]

**BILLING CODE 6690–01–P**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12

CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than July 1, 2021.

**A. Federal Reserve Bank of New York** (Ivan Hurwitz, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to [Comments.applications@ny.frb.org](mailto:Comments.applications@ny.frb.org):

1. **New York Community Bancorp, Inc., Westbury, New York;** to acquire Flagstar Bancorp, Inc., and thereby indirectly acquire Flagstar Bank, FSB, both of Troy, Michigan, and thereby engage in extending credit and servicing loans and operating a savings association, pursuant to section 225.28(b)(1) and (b)(4)(ii) of the Board's Regulation Y, respectively.

Board of Governors of the Federal Reserve System, May 26, 2021.

**Michele Taylor Fennell,**  
Deputy Associate Secretary of the Board.  
[FR Doc. 2021–11481 Filed 5–28–21; 8:45 am]

**BILLING CODE 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 June 16, 2021.

*A. Federal Reserve Bank of Minneapolis* (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *The Elizabeth King Bach Trust, E.L. King Jr. Marital Trust fbo E.L. King III, E.L. King Jr. Marital Trust fbo Elizabeth King Bach, E.L. King, Jr. Generation Skip Trust fbo E.L. King III, and E.L. King, Jr. Generation Skip Trust fbo Elizabeth King Bach, all of Winona, Minnesota; and WNB Financial, National Association, Winona, Minnesota, and Kent Gernander, Rushford, Minnesota, as co-trustees to the aforementioned trusts. Additionally, the David King Marital Trust, Winona, Minnesota, WNB Financial, National Association, as trustee, and Kent Gernander with proxy power to vote; to become members of the Gernander group, a group acting in concert, to retain voting shares of WNB Holding Company, and thereby indirectly retain voting shares WNB Financial, National Association, both of Winona, Minnesota.*

2. *Daniel King, North Plains, Oregon; Sarah King, Henderson, Nevada;*

*Heather Bach, LaCrosse, Wisconsin; Nicolle Jensen, Santa Fe, New Mexico; Sarah Bach-Lumsden, the Frederick R. King Marital Trust U/W, the Frederick R. King Family Trust U/W, and WNB Financial, National Association and Elizabeth King Bach, as co-trustees of both trusts, all of Winona, Minnesota; to become members of the King group, a group acting in concert, to retain voting shares of WNB Holding Company, and thereby indirectly retain voting shares of WNB Financial, National Association, both of Winona, Minnesota.*

Board of Governors of the Federal Reserve System, May 26, 2021.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2021–11482 Filed 5–28–21; 8:45 am]

**BILLING CODE P**

**FEDERAL RESERVE SYSTEM****Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than July 1, 2021.

*A. Federal Reserve Bank of Cleveland* (Mary S. Johnson, Vice President) 1455 East Sixth Street, Cleveland, Ohio

44101–2566. Comments can also be sent electronically to [Comments.applications@clev.frb.org](mailto:Comments.applications@clev.frb.org):

1. *Peoples Bancorp, Inc., Marietta, Ohio; to acquire Premier Financial Bancorp, Inc., and thereby indirectly acquire Premier Bank, Inc., both of Huntington, West Virginia and Citizens Deposit and Trust, Inc., Vanceburg, Kentucky.*

*B. Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *First Bancorp of Taylorville, Inc., Taylorville, Illinois; to merge with Mackinaw Valley Financial Services, Inc., and thereby indirectly acquire First Security Bank, both of Mackinaw, Illinois.*

Board of Governors of the Federal Reserve System, May 26, 2021.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2021–11487 Filed 5–28–21; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Agency for Healthcare Research and Quality****Common Formats for Patient Safety Data Collection**

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Notice of Availability—New Common Formats.

**SUMMARY:** As authorized by the Secretary of HHS, AHRQ coordinates the development of common definitions and reporting formats (Common Formats) for reporting on health care quality and patient safety. The purpose of this notice is to announce the availability of *Common Formats for Event Reporting—Diagnostic Safety (CFER-DS) Version 0.1* for public review and comment.

**DATES:** July 1, 2021.

**ADDRESSES:** The *Common Formats for Event Reporting—Diagnostic Safety (CFER-DS) Version 0.1* can be accessed electronically at the following website: [https://www.qualityforum.org/Common\\_Formats\\_for\\_Patient\\_Safety\\_Data.aspx](https://www.qualityforum.org/Common_Formats_for_Patient_Safety_Data.aspx).

**FOR FURTHER INFORMATION CONTACT:** Dr. Hamid Jalal, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, Rockville, MD 20857; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231;

TTY (local): (301) 427-1130; Email: [psa@ahrq.hhs.gov](mailto:psa@ahrq.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**Background on Common Formats Development**

The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), 42 U.S.C. 299b-21 to b-26, and the related Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR part 3, published in the **Federal Register** on November 21, 2008, 73 FR 70731-70814, provide for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The collection of patient safety work product allows for the aggregation of data that help to identify and address underlying causal factors of patient safety and quality issues.

The Patient Safety Act provides for AHRQ to develop standardized reporting formats using common language and definitions (Common Formats) for reporting on health care quality and patient safety that will ensure that data collected by PSOs and other entities have comparable clinical meaning. The Common Formats facilitate aggregation of comparable data at local, PSO, regional and national levels. In addition, the Common Formats are intended to enhance the reporting of information that is standardized.

Since February 2005, AHRQ has convened the Federal Patient Safety Work Group (PSWG) to assist AHRQ in developing and maintaining the Common Formats. The PSWG includes major health agencies within HHS as well as the Departments of Defense and Veterans Affairs. The PSWG helps assure the consistency of definitions/ formats with those of relevant government agencies. In addition, AHRQ has solicited comments from the private and public sectors, since 2008, regarding proposed versions of the Common Formats through a contract with the National Quality Forum (NQF), which is a non-profit organization focused on health care quality. After receiving comments, the NQF solicits review of the formats by its Common Formats Expert Panel. Subsequently, NQF provides this input to AHRQ who then uses it to refine the Common Formats before issuing a production version.

AHRQ previously developed and maintains Common Formats for three settings of care—acute care hospitals, skilled nursing facilities, and community pharmacies—for use by

healthcare providers and PSOs. AHRQ-listed PSOs are required to collect patient safety work product in a standardized manner to the extent practical and appropriate, a requirement the PSO can meet by collecting such information using Common Formats. Additionally, health care providers and other organizations not working with an AHRQ-listed PSO can use the Common Formats in their work to improve quality and safety; however, they cannot benefit from the federal confidentiality and privilege protections of the Patient Safety Act.

The CFER-DS is the first AHRQ Common Formats for Event Reporting that can be used across healthcare settings. It is designed to capture standardized, structured data to facilitate the reporting of diagnostic safety events for the purpose of learning about how to improve diagnostic safety and better support clinicians in the diagnostic process.

The CFER-DS is not designed for frontline incident reporting. It is intended to facilitate the collection and organization of a basic set of meaningful data about diagnostic safety events that can be used, aggregated and analyzed for learning and improvement. Having a common frame of reference and standardized data elements is what makes shared learning possible at local, regional and national levels. Users decide if and how to integrate collection of specific data elements into their incident reporting systems and other existing work processes.

AHRQ is specifically interested in receiving feedback in order to guide improvement of the CFER-DS V0.1. As with other Common Formats, the Event Description is available for public comment. Additionally, AHRQ is seeking feedback on a user guide and a form. Additional supporting documentation will be finalized and made available following AHRQ's receipt of comment from the public and NQF's Common Format Expert Panel. Information on how to comment is available at: [http://www.qualityforum.org/Project\\_Pages/Common\\_Formats\\_for\\_Patient\\_Safety\\_Data.aspx](http://www.qualityforum.org/Project_Pages/Common_Formats_for_Patient_Safety_Data.aspx).

Additional information about the AHRQ Common Formats can be obtained through AHRQ's PSO website: <https://pso.ahrq.gov/common-formats>.

Dated: May 25, 2021.

**Marquita Cullom,**  
Associate Director.

[FR Doc. 2021-11386 Filed 5-28-21; 8:45 am]

**BILLING CODE 4160-90-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

[Document Identifier: CMS-29, CMS-437 and 10452]

**Agency Information Collection Activities: Submission for OMB Review; Comment Request**

**AGENCY:** Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by July 1, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

**FOR FURTHER INFORMATION CONTACT:**  
William Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Verification of Clinic Data—Rural Health Clinic Form and Supporting Regulations; *Use:* The form is utilized as an application to be completed by suppliers of Rural Health Clinic (RHC) services requesting participation in the Medicare program. This form initiates the process of obtaining a decision as to whether the conditions for certification are met as a supplier of RHC services. It also promotes data reduction or introduction to and retrieval from the Automated Survey Process Environment (ASPEN) and related survey and certification databases by the CMS Regional Offices. Should any question arise regarding the structure of the organization, this information is readily available. *Form Number:* CMS–29 (OMB control number 0938–0074); *Frequency:* Occasionally (initially and then every six years); *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 1,887; *Total Annual Responses:* 5,661; *Total Annual Hours:* 1,269. (For policy questions regarding this collection contact Shonte Carter at 410–786–3532.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Psychiatric Unit Criteria Work Sheet; *Use:* Certain specialty hospitals and hospital specialty distinct-part units may be excluded from the Inpatient Medicare

Prospective Payment System (IPPS) and be paid at a different rate. These specialty hospitals and distinct-part units of hospitals include Inpatient Rehabilitation Facilities (IRFs) units, Inpatient Rehabilitation Facilities (IRFs) hospitals and Inpatient Psychiatric Facilities (IPFs).

CMS regulations at 42 CFR 412.20 through 412.29 describe the criteria under which these specialty hospitals and specialty distinct-part hospital units are excluded from the IPPS. Form CMS–437 is used by Inpatient Psychiatric Facilities (IPFs) to attest to meeting the necessary requirements that make them exempt for receiving payment from Medicare under the IPPS. These IPFs must use CMS–437 to attest that they meet the requirements for IPPS exempt status prior to being placed into excluded status. The IPFs must re-attest to meeting the exclusion criteria annually. *Form Number:* CMS–437 (OMB control number: 0938–0358); *Frequency:* Annually; *Affected Public:* Private sector—Business or other for-profits; *Number of Respondents:* 1,598; *Total Annual Responses:* 1,598; *Total Annual Hours:* 1,732. (For policy questions regarding this collection contact Caroline Gallaher at 410–786–8705.)

3. *Type of Information Collection Request:* Extension of a previously approved collection; *Title of Information Collection:* CMS Identity Management (IDM) System; *Use:* HIPAA regulations require covered entities to verify the identity of the person requesting Personal Health Information (PHI) and the person’s authority to have access to that information. Per the HIPAA Security Rule, covered entities, regardless of their size, are required under Section 164.312(a)(2)(i) to “assign a unique name and/or number for identifying and tracking user identity.” A ‘user’ is defined in Section 164.304 as a “person or entity with authorized access”. Accordingly, the Security Rule requires covered entities to assign a unique name and/or number to each employee or workforce member who uses a system that receives, maintains or transmits electronic PHI, so that system access and activity can be identified and tracked by user. This pertains to workforce members within health plans, group health plans, small or large provider offices, clearinghouses and beneficiaries.

The information collected will be gathered and used solely by CMS, approved contractor(s), and state health insurance exchanges to prove the identity of an individual requesting electronic access to CMS protected information or services. Information

confidentiality will conform to the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Federal Information Security Management Act (FISMA) requirements. Respondents may also access CMS’ Terms of Service and Privacy Statement on the CMS Portal and IDM websites.

CMS has moved from this centralized on-premise model for enterprise identity management to a cloud-based solution, IDM, with multiple products providing specialized services: Okta Identity as a Service (IDaaS), which includes Multi-Factor Authentication (MFA) services; Experian Remote Identity Proofing (RIDP) services; and Cloud Computing Services—Amazon Web Services/Information Technology Operations (CCS—AWS/ITOps) Hub Hosting. In order to prove the identity of an individual requesting electronic access to CMS protected information or services, IDM (leveraging Experian Precise ID RIDP services) will collect a core set of attributes about that individual. *Form Number:* CMS–10452 (OMB control number: 0938–1236); *Frequency:* Yearly; *Affected Public:* Individuals and Households; *Number of Respondents:* 560,000; *Total Annual Responses:* 560,000; *Total Annual Hours:* 186,667. (For policy questions regarding this collection contact Malachi Robinson at 410–786–1849).

Dated: May 26, 2021.

**William N. Parham, III,**  
Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–11491 Filed 5–28–21; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifier: CMS–179 and CMS–10775]

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS’ intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register**

concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by August 2, 2021.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: \_\_\_, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

**FOR FURTHER INFORMATION CONTACT:** William N. Parham at (410) 786-4669.

**SUPPLEMENTARY INFORMATION:**

## Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS-179—Medicaid State Plan Base Plan Pages

CMS-10775—Medicare Severity Diagnosis Related Groups Reclassification Request (MS-DRGs)

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

## Information Collection

**1. Type of Information Collection Request:** Revision of a currently approved collection; **Title of Information Collection:** Medicaid State Plan Base Plan Pages; **Use:** State Medicaid agencies complete the plan pages while we review the information to determine if the state has met all of the requirements of the provisions the states choose to implement. If the requirements are met, we will approve the amendments to the state's Medicaid plan giving the state the authority to implement the flexibilities. For a state to receive Medicaid Title XIX funding, there must be an approved Title XIX state plan. **Form Number:** CMS-179 (OMB control number 0938-0193); **Frequency:** Occasionally; **Affected Public:** State, Local, and Tribal Governments; **Number of Respondents:** 56; **Total Annual Responses:** 1,120; **Total Annual Hours:** 22,400. (For policy questions regarding this collection contact Gary Knight at 304-347-5723.)

**2. Type of Information Collection Request:** New Collection; **Title of Information Collection:** Medicare Severity Diagnosis Related Groups Reclassification Request (MS-DRGs); **Use:** Section 1886(d)(4) of the Act establishes a classification system, referred to as DRGs, for inpatient discharges and adjusts payments under the IPPS based on appropriate weighting factors assigned to each MS-DRG. Section 1886(d)(4)(C)(i) of the Act specifies adjustments to the classification and weighting factors shall occur "at least annually to reflect changes in treatment patterns,

technology, and other factors which may change the relative use of hospital resources."

The requests are evaluated in the Division of Coding and DRGs (DCDRG) by the DRG and Coding Team and the clinical advisors (medical officers) in both the Technology, Coding and Pricing Group (TCPG) and the Hospital and Ambulatory Policy Group (HAPG), along with the CMS contractor(s). This team participates via conference calls in the review of MedPAR claims data to analyze and perform clinical review of the requested changes. Based on the examination of claims data and clinical judgment, the team provides recommendations to CMS and HHS leadership for proposed changes. Per the statute, proposed MS-DRG changes and payment adjustments must go through notice and comment rulemaking giving the opportunity for the public to comment. Finalized MS-DRG changes are effective with discharges on and after October 1, consistent with the beginning of the fiscal year. CMS makes the updated MS-DRG Grouper software and related materials that reflects the changes available to the public for free via download at: <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/MS-DRG-Classifications-and-Software>.

When an application is submitted in MEARISTM, the DRG and Coding Team in DCDRG will have instant access to the application request and accompanying materials to facilitate a more timely review of the request, including the ability to efficiently inform other team members involved in the process that information is available for their review and input. **Form Number:** CMS-10775 (OMB control number 0938-New); **Frequency:** Occasionally; **Affected Public:** Private Sector, Business or other for-profits, Not-for-profits institutions; **Number of Respondents:** 50; **Total Annual Responses:** 50; **Total Annual Hours:** 48,000. (For policy questions regarding this collection contact Marilu Hue at 410-786-4510.)

Dated: May 26, 2021.

**William N. Parham, III,**

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021-11490 Filed 5-28-21; 8:45 am]

**BILLING CODE 4120-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration**

[Docket Nos. FDA-2021-D-0242, FDA-2021-D-0243, FDA-2021-D-0244, and FDA-2021-D-0245]

**Compliance Policy Guide Sec. 555.400 Aflatoxins in Human Food; Compliance Policy Guide Sec. 570.200 Aflatoxins in Brazil Nuts; Compliance Policy Guide Sec. 570.375 Aflatoxins in Peanuts and Peanut Products; and Compliance Policy Guide Sec. 570.500 Aflatoxins in Pistachio Nuts; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing the availability of four final Compliance Policy Guides (CPG) entitled “Compliance Policy Guide Sec. 555.400 Aflatoxins in Human Food,” “Compliance Policy Guide Sec. 570.200 Aflatoxins in Brazil Nuts,” “Compliance Policy Guide Sec. 570.375 Aflatoxins in Peanuts and Peanut Products,” and “Compliance Policy Guide Sec. 570.500 Aflatoxins in Pistachio Nuts.” These CPGs revise the existing CPGs by updating the format and including references to other aflatoxins CPGs and a reference to the Memorandum of Understanding between the Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA) and FDA. The CPGs provide guidance for FDA staff on FDA’s current regulatory criteria for aflatoxins in human food, Brazil nuts, peanuts and peanut products, and pistachio nuts.

**DATES:** The announcement of the guidances is published in the **Federal Register** on June 1, 2021.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or

anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

**Instructions:** All submissions received must include Docket No. FDA-2021-D-0242 for “Compliance Policy Guide Sec. 555.400 Aflatoxins in Human Food,” Docket No. FDA-2021-D-0243 for “Compliance Policy Guide Sec. 570.200 Aflatoxins in Brazil Nuts,” Docket No. FDA-2021-D-0244 for “Compliance Policy Guide Sec. 570.375 Aflatoxins in Peanuts and Peanut Products,” and Docket No. FDA-2021-D-0245 for “Compliance Policy Guide Sec. 570.500 Aflatoxins in Pistachio Nuts.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>.

[www.regulations.gov](http://www.regulations.gov). Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidances to the Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4337, Silver Spring, MD 20993. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidances.

**FOR FURTHER INFORMATION CONTACT:** Mischelle Ledet, Office of Compliance, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-701-5986.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

We are announcing the availability of four CPGs for FDA staff entitled “Compliance Policy Guide Sec. 555.400 Aflatoxins in Human Food,” “Compliance Policy Guide Sec. 570.200 Aflatoxins in Brazil Nuts,” “Compliance Policy Guide Sec. 570.375 Aflatoxins in Peanuts and Peanut Products,” and “Compliance Policy Guide Sec. 570.500 Aflatoxins in Pistachio Nuts.” We are issuing these guidances consistent with our good guidance practices regulation (21 CFR 10.115). We are issuing these four CPGs as final and without first providing an opportunity to comment

because the revisions are non-substantive; for example, we revised the CPGs' formats to be consistent with other CPGs, included references to other aflatoxins CPGs, and included a reference to the Memorandum of Understanding between USDA/AMS and FDA. Given the minor nature of these revisions, an opportunity for public comment before we finalize the CPGs is unnecessary. However, as is the case for all guidance documents, the public may comment on any guidance document at any time (§ 10.115(g)(5)).

The guidances represent the current thinking of FDA on this topic. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

These four CPGs update the previously issued “CPG Sec. 555.400 Foods—Adulteration with Aflatoxin,” “CPG Sec. 570.200 Brazil Nuts—Adulteration with Aflatoxin,” “CPG Sec. 570.375 Aflatoxin in Peanuts and Peanut Products,” and “CPG Sec. 570.500 Pistachio Nuts—Aflatoxin Adulteration.” The CPGs are intended to provide guidance for FDA staff regarding adulteration in human food, Brazil nuts, peanuts and peanut products, and pistachio nuts due to the presence of aflatoxins and explain when we may consider such foods to be adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342).

## II. Paperwork Reduction Act of 1995

These guidances contain no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## III. Electronic Access

Persons with access to the internet may obtain the guidances at either <https://www.fda.gov/FoodGuidances> or <https://www.regulations.gov>. Use the FDA website listed in the previous sentence to find the most current version of the guidances.

Dated: May 24, 2021.

**Lauren K. Roth,**  
Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021-11388 Filed 5-28-21; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS-0990-new]

### Agency Information Collection Request. 30-Day Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

**DATES:** Comments on the ICR must be received on or before July 1, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://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:** Sherrette Funn, [Sherrette.Funn@hhs.gov](mailto:Sherrette.Funn@hhs.gov) or (202) 795-7714. When submitting comments or requesting information, please include the document identifier 0990-New-30D and project title for reference.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity

of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Title of the Collection:** Advancing the response to COVID-19 Learning Community Measure.

**Type of Collection:** New.

OMB No. 0990-NEW—Office within OS—OMH

**Abstract:** The Department of Health and Human Services, Office of Minority Health (OMH) is seeking an approval by OMB on a new information collection, Advancing the response to COVID-19 Learning Community Measure (hereafter COVID-19 Learning Community Measure). The purpose of this data collection is to gather quantitative and qualitative data from Learning Community members to monitor learning community performance in achieving process and outcome measures over the course of the one-year project. OMH will collect a set of process and outcome measures from program participants to assess the degree to which the learning community is effective in connecting subject matter experts and public health leaders, facilitating networking, and peer-to-peer information sharing of promising practices, programs, and/or policy.

The OMB clearance will enable OMH to monitor and evaluate the COVID-19 Learning Community performance. The data will be used to report the impact of the COVID-19 Learning Community. The ability to monitor and evaluate performance in this manner, and to work towards continuous program improvement are basic functions that OMH must be able to accomplish in order to carry out goals for the COVID-19 Learning Community and to ensure the most effective and appropriate use of resources.

**Likely Respondents:** Members and staff from academia, community organizations, local/state/federal government, private sector, and tribal government and services who serve American Indian and Alaska Native and/or racial and ethnic minorities.

## ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
COVID-19 Learning Community Members .....	200	1	5/60	17
<b>Total .....</b>	.....	.....	.....	17

**Sherrette A. Funn,**

*Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.*

[FR Doc. 2021-11420 Filed 5-28-21; 8:45 am]

**BILLING CODE 4150-29-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative and Clinical Endocrinology and Reproduction Study Section.

*Date:* June 23-24, 2021.

*Time:* 9:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301-435-1154, [dianne.hardy@nih.gov](mailto:dianne.hardy@nih.gov).

*Name of Committee:* Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

*Date:* June 23-25, 2021.

*Time:* 9:30 a.m. to 7:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Maribeth Champoux, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 594-3163, [champoum@csr.nih.gov](mailto:champoum@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel PAR-20-211: Mid-Career Enhancement Awards to Integrate Basic Behavioral, Biomedical, and/or Social Scientific Processes (K18 No Independent Clinical Trials).

*Date:* June 23, 2021.

*Time:* 4:30 p.m. to 7:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Maribeth Champoux, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, 301-594-3163, [champoum@csr.nih.gov](mailto:champoum@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.

*Date:* June 24, 2021.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Yunshang Piao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive Room 6184, Bethesda, MD 20892, 301-402-8402, [piaoy3@mail.nih.gov](mailto:piaoy3@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Instrumentation, Environmental, and Occupational Safety.

*Date:* June 28-29, 2021.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Joonil Seog, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301-402-9791, [joonil.seog@nih.gov](mailto:joonil.seog@nih.gov).

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Pregnancy and Neonatology Study Section.

*Date:* June 28-30, 2021.

*Time:* 9:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Andrew Maxwell Wolfe, Ph.D., Scientific Review Officer, Center for Scientific Review, NIH, 6701 Rockledge Dr. Room 6214, Bethesda, MD 20892, 301-402-3019, [andrew.wolfe@nih.gov](mailto:andrew.wolfe@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business Applications: Drug Discovery and Development.

*Date:* June 28-29, 2021.

*Time:* 10:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301-435-1180, [ruvinser@csr.nih.gov](mailto:ruvinser@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Non-Viral Anti-Infective Therapeutics.

*Date:* June 29, 2021.

*Time:* 9:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* 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](mailto:bidyottam.mittra@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Musculoskeletal, Rehabilitation and Skin Sciences.

*Date:* June 29-30, 2021.

*Time:* 9:00 a.m. to 8:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Chi-Wing Chow, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, Bethesda, MD 20892, (301) 402-3912, [chowc2@mail.nih.gov](mailto:chowc2@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Mechanisms of Disparities in Etiology and Outcomes of Lung Cancer.

*Date:* June 29, 2021.

*Time:* 1:00 p.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Ola Mae Zack Howard, BS, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, 301-451-4467, [howardz@mail.nih.gov](mailto:howardz@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Academic Industrial Partnerships for Translation of Medical Technologies.

*Date:* July 1-2, 2021

*Time:* 9:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, (301) 237-9897, [xugufen@csr.nih.gov](mailto:xugufen@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.

*Date:* July 1, 2021.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Yunshang Piao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive Room 6184, Bethesda, MD 20892, 301.402.8402, [piaoy3@mail.nih.gov](mailto:piaoy3@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Skeletal Biology and Regeneration.

*Date:* July 1, 2021.

*Time:* 10:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Chee Lim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, (301) 435-1850, [limc4@csr.nih.gov](mailto:limc4@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA-RM-21-010 Cellular Senescence Network: Consortium Organization and Data Coordinating Center (U24).

*Date:* July 1, 2021.

*Time:* 10:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Thomas Beres, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 5201, MSC 7840 Bethesda, MD 20892, 301-435-1175, [berestm@mail.nih.gov](mailto:berestm@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

*Dated:* May 26, 2021.

**David W. Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021-11474 Filed 5-28-21; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Sleep Disorders Research Advisory Board.

The meeting will be open to the public. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Sleep Disorders Research Advisory Board.

*Date:* June 24, 2021.

*Time:* 12:00 p.m. to 2:00 p.m.

*Agenda:* The purpose of this meeting is to review the Sleep Research Plan for approval by the SDRAB. A full draft of the Sleep Research Plan is available at [ncsdr.ideascale.com](http://ncsdr.ideascale.com).

*Place:* Virtual-Teleconference and Zoomgov.

*Telephone Access:* 1-646-828-7666

(Meeting ID: 161 106 8592; Passcode: 576739)

*Virtual Access:* <https://nih.zoomgov.com> (Meeting ID: 161 106 8592; Passcode: 576739)

*Contact Person:* Marishka Brown, Ph.D., SDRAB Executive Secretary, Director, National Center on Sleep Disorders Research, National Institutes of Health, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Suite 407B, Bethesda, MD 20892, 301-435-0199, [ncsdr@nih.gov](mailto:ncsdr@nih.gov).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: [www.nhlbi.nih.gov/meetings/index.htm](http://www.nhlbi.nih.gov/meetings/index.htm), where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

*Dated:* May 26, 2021.

**David W. Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021-11477 Filed 5-28-21; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of Fellowship Applications.

*Date:* June 30, 2021.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Jimok Kim, Ph.D., Scientific Review Officer, Scientific Review Branch, NIDCR, NIH, 6701 Democracy Boulevard, Suite 664, Bethesda, MD 20892, 301-402-8559, [jimok.kim@nih.gov](mailto:jimok.kim@nih.gov).

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

*Dated:* May 26, 2021.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021-11478 Filed 5-28-21; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Dental & Craniofacial Research; 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:* NIDCR Special Grants Review Committee.

*Date:* June 17-18, 2021.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

**Place:** National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

**Contact Person:** Latarsha J. Carithers, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, 6701 Democracy Boulevard, Bethesda, MD 20892, (301) 594-4859, [latarsha.carithers@nih.gov](mailto:latarsha.carithers@nih.gov).

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 26, 2021.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021-11495 Filed 5-28-21; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

**FOR FURTHER INFORMATION CONTACT:** Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240-276-2600 (voice); [Anastasia.Donovan@samhsa.hhs.gov](mailto:Anastasia.Donovan@samhsa.hhs.gov) (email).

**SUPPLEMENTARY INFORMATION:** In accordance with Section 9.19 of the Mandatory Guidelines, a notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed

at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at <https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list>.

The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

### HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

### HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780-784-1190, (Formerly: Gamma-Dynacare Medical Laboratories)

### HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504-361-8989/800-433-3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804-378-9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215-2802, 800-445-6917

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800-442-0438, (Formerly: STERLING Reference Laboratories)

Desert Tox, LLC, 5425 E Bell Rd, Suite 125, Scottsdale, AZ, 85254, 602-457-5411 / 623-748-5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800-235-4890

Dynacare\*, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519-

\* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were

Continued

679–1630, (Formerly: Gamma-Dynacare Medical Laboratories) ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc.) CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.); MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive,

accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (*Federal Register*, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the *Federal Register* on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

**Anastasia Marie Donovan,  
Policy Analyst.**

[FR Doc. 2021–11486 Filed 5–28–21; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

[1651–0008]

#### Application for Identification Card

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 30-Day notice and request for comments; extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the *Federal Register* to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and must be submitted (no later than July 1, 2021) to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection, OMB Control

Number 1651–0008, by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email [CBP\\_PRA@cbp.dhs.gov](mailto:CBP_PRA@cbp.dhs.gov). Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the *Federal Register* (86 FR 16605) on March 30, 2021, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

## Overview of This Information Collection

**Title:** Application for Identification Card.

**OMB Number:** 1651–0008.

**Form Number:** CBP Form 3078.

**Current Actions:** Extension with an increase in burden hours.

**Type of Review:** Extension (with change).

**Affected Public:** Businesses.

**Abstract:** CBP Form 3078, *Application for Identification Card*, is filled out in order to obtain an Identification Card that is used to gain access to CBP security areas. This form collects biographical information and is usually completed by airport employees, Broker's Employee, CBP Security Area Identification, Warehouse Officer or Employee, Container Station Employee, Foreign Trade Zone Employee, CES Employee, licensed Cartmen or Lightermen whose duties require receiving, transporting, or otherwise handling imported merchandise which has not been released from CBP custody. This form may be submitted electronically or to the local CBP office at the port of entry that the respondent will be requesting access to the Federal Inspection Section (FIS).

CBP Form 3078 is authorized by 19 U.S.C. 66, 1551, 1555, 1565, 1624, 1641; and 19 CFR 112.41, 112.42, 118, 122.182, and 146.6. This form is accessible at: <https://www.cbp.gov/newsroom/publications/forms?title=3078&=Apply>.

**Type of Information Collection:** CBP Form 3078.

**Estimated Number of Respondents:** 200,000.

**Estimated Number of Annual Responses per Respondent:** 1.

**Estimated Number of Total Annual Responses:** 200,000.

**Estimated Time per Response:** 0.283 Hours.

**Estimated Total Annual Burden Hours:** 56,600.

Dated: May 26, 2021.

**Seth D. Renkema,**

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2021-11455 Filed 5-28-21; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection [1651–0009]

### U.S. Customs Declaration (CBP Form 6059B)

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day notice and request for comments; extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and must be submitted (no later than August 2, 2021) to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0009 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP\_PRA@cbp.dhs.gov*.

Due to COVID-19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP\_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501

*et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

## Overview of This Information Collection

**Title:** U.S. Customs Declaration.

**OMB Number:** 1651–0009.

**Form Number:** CBP Form 3059B.

**Current Actions:** Extension without change.

**Type of Review:** Extension (without change).

**Affected Public:** Individuals.

**Abstract:** CBP Form 6059B, Customs Declaration, is used as a standard report of the identity and residence of each person arriving in the United States. This form is also used to declare imported articles to U.S. Customs and Border Protection (CBP) in accordance with 19 CFR 122.27, 148.12, 148.13, 148.110, 148.111; 31 U.S.C. 5316 and Section 498 of the Tariff Act of 1930, as amended (19 U.S.C. 1498).

Section 148.13 of the CBP regulations prescribes the use of the CBP Form 6059B when a written declaration is required of a traveler entering the United States. Generally, written declarations are required from travelers arriving by air or sea. Section 148.12 requires verbal declarations from travelers entering the United States, unless an inspecting officer requires a written declaration on CBP Form 6059B. Generally, verbal declarations are required from travelers arriving by land.

CBP continues to find ways to improve the entry process through the use of mobile technology to ensure it is safe and efficient. To that end, CBP is

testing the operational effectiveness of a process which allows travelers to use a mobile app to submit information to CBP prior to arrival. This process, called Mobile Passport Control (MPC) which is a mobile app that allows travelers to self-segment upon arrival into the United States—a process also known as intelligent queuing. The submission of information in advance using MPC allows CBP to direct travelers to the appropriate queue in primary or self-segment directly to secondary if additional inspection is necessary. The continued testing also helps determine under what circumstances CBP should require a written customs declaration (CBP Form 6059B) and when it is beneficial to admit travelers who make an oral customs declaration during the primary inspection. MPC eliminates the administrative tasks performed by the officer during a traditional inspection and in most cases will eliminate the need for respondents/travelers to fill out a paper declaration. MPC provides a more efficient and secure in person inspection between the CBP Officer and the traveler.

Another electronic process that CBP is testing in lieu of the paper CBP Form 6059B is the Automated Passport Control (APC). This is a CBP program that facilitates the entry process for travelers by providing self-service kiosks in CBP's Primary Inspection area that travelers can use to make their declaration.

Both APC and MPC allow an electronic method for travelers to answer the questions that appear on CBP Form 6059B without filling out a paper form.

A sample of CBP Form 6059B can be found at <https://www.cbp.gov/newsroom/publications/forms?title=6059>. This collection is available in the following languages: English, French, Vietnamese, German, Italian, Japanese, Korean, Polish, Portuguese, Russian, Chinese, Hebrew, Spanish, Dutch, Arabic, Farsi, and Punjabi.

*Type of Information Collection:* Customs Declaration (Form 3059B).

*Estimated Number of Respondents:* 34,006,000.

*Estimated Number of Annual Responses per Respondent:* 1.

*Estimated Number of Total Annual Responses:* 34,006,000.

*Estimated Time per Response:* 4 minutes or 0.067 hours.

*Estimated Total Annual Burden Hours:* 2,278,402.

*Type of Information Collection:* Verbal Declarations.

*Estimated Number of Respondents:* 233,000,000.

*Estimated Number of Annual Responses per Respondent:* 1.

*Estimated Number of Total Annual Responses:* 233,000,000.

*Estimated Time per Response:* 10 seconds or 0.003 hours.

*Estimated Total Annual Burden Hours:* 699,000.

*Type of Information Collection:* APC Terminals.

*Estimated Number of Respondents:* 70,000,000.

*Estimated Number of Annual Responses per Respondent:* 1.

*Estimated Number of Total Annual Responses:* 70,000,000.

*Estimated Time per Response:* 2 minutes or 0.033 hours.

*Estimated Total Annual Burden Hours:* 2,310,000.

*Type of Information Collection:* MPC App.

*Estimated Number of Respondents:* 500,000.

*Estimated Number of Annual Responses per Respondent:* 1.

*Estimated Number of Total Annual Responses:* 500,000.

*Estimated Time per Response:* 2 minutes or 0.033 hours.

*Estimated Total Annual Burden Hours:* 16,500.

Dated: May 25, 2021.

**Seth D. Renkema,**

*Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.*

[FR Doc. 2021-11399 Filed 5-28-21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

[Docket No. DHS-2021-0022]

### DHS Data Privacy and Integrity Advisory Committee

**AGENCY:** Department of Homeland Security Privacy Office.

**ACTION:** Request for applicants for appointment to the DHS Data Privacy and Integrity Advisory Committee.

**SUMMARY:** The U.S. Department of Homeland Security seeks applicants for appointment to the DHS Data Privacy and Integrity Advisory Committee.

**DATES:** Applications for membership must reach the Department of Homeland Security Privacy Office at the address below on or before June 23, 2021.

**ADDRESSES:** If you wish to apply for membership, please submit the documents described below to Nicole Sanchez, Designated Federal Officer, DHS Data Privacy and Integrity

Advisory Committee, by either of the following methods:

- *Email:* [PrivacyCommittee@hq.dhs.gov](mailto:PrivacyCommittee@hq.dhs.gov). Include the Docket Number (DHS-2021-0022) in the subject line of the message.
- *Fax:* (202) 343-4010.

### FOR FURTHER INFORMATION CONTACT:

Nicole Sanchez, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Mail Stop 0655, Washington, DC 20528, by telephone (202) 343-1717, by fax (202) 343-4010, or by email to [PrivacyCommittee@hq.dhs.gov](mailto:PrivacyCommittee@hq.dhs.gov).

**SUPPLEMENTARY INFORMATION:** The DHS Data Privacy and Integrity Advisory Committee is an advisory committee established in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix. The Committee was established by the Secretary of Homeland Security under the authority of 6 U.S.C. 451 and provides advice at the request of the Secretary and the Chief Privacy Officer on programmatic, policy, operational, security, administrative, and technological issues within DHS that relate to personally identifiable information (PII), as well as data integrity, transparency, and other privacy-related matters. The duties of the Committee are solely advisory in nature. In developing its advice and recommendations, the Committee may, consistent with the requirements of the FACA, conduct studies, inquiries, or briefings in consultation with individuals and groups in the private sector and/or other governmental entities. The Committee typically hosts two public meetings per calendar year.

**Committee Membership:** The DHS Privacy Office is seeking applicants for terms of three years from the date of appointment. Members are appointed by and serve at the pleasure of the Secretary of the U.S. Department of Homeland Security and must be specially qualified to serve on the Committee by virtue of their education, training, and experience in the fields of data protection, privacy, cybersecurity, and/or emerging technologies. Members are expected to actively participate in Committee and Subcommittee activities and to provide material input into Committee research and recommendations. Pursuant to the FACA, the Committee's Charter requires that Committee membership be balanced to include:

1. Individuals who are currently working in higher education, state or

local government, or not-for-profit organizations;

2. Individuals currently working in for-profit organizations including at least one who shall be familiar with the data privacy-related issues addressed by small- to medium-sized enterprises; and

3. Individuals currently working in for-profit organizations, including at least one who shall be familiar with data privacy-related issues addressed by large-sized and/or multinational enterprises; and

4. Other individuals, as determined appropriate by the Secretary.

Committee members serve as Special Government Employees (SGE) as defined in section 202(a) of title 18 U.S.C. As such, they are subject to Federal conflict of interest laws and government-wide standards of conduct regulations. Members must annually file a New Entrant Confidential Financial Disclosure Reports (OGE Form 450) for review and approval by Department ethics officials. DHS may not release these reports or the information in them to the public except under an order issued by a Federal court or as otherwise permitted under the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (FOIA) (5 U.S.C. 552). Committee members may also be required to obtain and retain at least a secret-level security clearance as a condition of their appointment.

Members are not compensated for their service on the Committee; however, while attending meetings or otherwise engaged in Committee business, members may receive travel expenses and per diem in accordance with Federal regulations.

**Committee History and Activities:** All individuals interested in applying for Committee membership should review the history of the Committee's work. The Committee's charter and current membership, transcripts of Committee meetings, and all the Committee's reports and recommendations to the Department are posted on the Committee's web page on the DHS Privacy Office website ([www.dhs.gov/privacy](http://www.dhs.gov/privacy)).

**Applying for Membership:** If you are interested in applying for membership to the DHS Data Privacy and Integrity Advisory Committee, please submit the following documents to Nicole Sanchez, Designated Federal Officer, at the address provided below within 30 days of the date of this notice:

1. A current resume; and
2. A letter that explains your qualifications for service on the Committee and describes in detail how your experience is relevant to the Committee's work.

Your resume and your letter will be weighed equally in the application review process. Please note that individuals who are registered as Federal lobbyists are not eligible to serve on Federal advisory committees in an individual capacity. See "Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions," 79 FR 47482 (Aug. 13, 2014). If you are or were registered as a Federal lobbyist, you are not eligible to apply for membership on the DHS Data Privacy and Integrity Advisory Committee unless you have filed a bone fide de-registration or have been de-listed by your employer as an active lobbyist reflecting the actual cessation of lobbying activities, or you have not appeared on a quarterly lobbying report for three consecutive quarters as a result of actual cessation of lobbying activities. Applicants selected for membership will be required to certify, pursuant to 28 U.S.C. 1746, that they are not currently registered as Federal lobbyists. Pursuant to the Committee's Charter, individuals who are not U.S. citizens or legal permanent residents of the United States are not eligible to serve on the DHS Data Privacy and Integrity Advisory Committee. Please send your documents to Nicole Sanchez, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, by either of the following methods:

- Email: [PrivacyCommittee@hq.dhs.gov](mailto:PrivacyCommittee@hq.dhs.gov) or
- Fax: (202) 343-4010.

#### Privacy Act Statement: DHS's Use of Your Information

**Authority:** DHS requests that you voluntarily submit this information under its following authorities: the Federal Records Act, 44 U.S.C. 3101; the FACA, 5 U.S.C. appendix; and the Privacy Act of 1974, 5 U.S.C. 552a.

**Principal Purposes:** When you apply for appointment to the DHS Data Privacy and Integrity Advisory Committee, DHS collects your name, contact information, and any other personal information that you submit in conjunction with your application. We will use this information to evaluate your candidacy for Committee membership. If you are chosen to serve as a Committee member, your name will appear in publicly-available Committee documents, membership lists, and Committee reports.

**Routine Uses and Sharing:** In general, DHS will not use the information you provide for any purpose other than the principal purposes and will not share this information within or outside the agency. In certain circumstances, DHS

may share this information on a case-by-case basis as required by law or as necessary for a specific purpose, as described in the DHS/ALL-009 Department of Homeland Security Advisory Committees System of Records Notice (October 3, 2008, 73 FR 57639).

#### Effects of Not Providing Information:

You may choose not to provide the requested information or to provide only some of the information DHS requests. If you choose not to provide some or all of the requested information, DHS may not be able to consider your application for appointment to the Data Privacy and Integrity Advisory Committee.

#### Accessing and Correcting Information:

If you are unable to access or correct this information by using the method that you originally used to submit it, you may submit a Privacy Act and FOIA request in writing to the DHS Chief FOIA Officer at [foia@hq.dhs.gov](mailto:foia@hq.dhs.gov). Additional instructions are available at <http://www.dhs.gov/foia> and in the DHS/ALL-009 Department of Homeland Security Advisory Committees System of Records Notice (October 3, 2008, 73 FR 57639) referenced above.

Dated: May 21, 2021.

**Lynn Parker Dupree,**  
*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 2021-11447 Filed 5-28-21; 8:45 am]  
**BILLING CODE 9110-9L-P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[Docket No. FWS-R4-ES-2021-0050;  
FXES1114040000-212-FF04EF4000]

#### Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink, Lake County, FL; Categorical Exclusion

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comment and information.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce receipt of an application from PMDW Ventures, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink incidental to construction in Lake County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that

this HCP qualifies as “low-effect,” categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

**DATES:** We must receive your written comments on or before July 1, 2021.

**ADDRESSES:** *Obtaining Documents:* You may obtain copies of the documents online in Docket No. FWS-R4-ES-2021-0050 at <http://www.regulations.gov>.

**Submitting Comments:** If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R4-ES-2021-0050.

- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS-R4-ES-2021-0050; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

**FOR FURTHER INFORMATION CONTACT:** Erin M. Gawera, by telephone at (904) 731-3121 or via email at [erin\\_gawera@fws.gov](mailto:erin_gawera@fws.gov). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1-800-877-8339 for TTY assistance.

**SUPPLEMENTARY INFORMATION:** We, the Fish and Wildlife Service (Service), announce receipt of an application from PMDW Ventures, LLC for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) incidental to the construction of a commercial development (project) in Lake County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that this HCP qualifies as “low-effect,” categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form.

## Project

The applicant requests a 5-year ITP to take sand skinks through the conversion of approximately 3.79 acres (ac) of occupied sand skink foraging and sheltering habitat incidental to the construction of a commercial development (Hartle Road) located on a 10.3-ac parcel in Section 26, Township 22S, Range 26E, Lake County, Florida,

identified by Parcel ID Alternate Key Numbers 1648181 and 1648173. The applicant proposes to mitigate for take of the sand skinks by purchasing 7.58 credits from Backbone Conservation Bank or another Service-approved Conservation Bank. The Service would require the applicant to purchase the credits prior to engaging in activities associated with the project.

## Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

## Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and the proposed mitigation, would individually and cumulatively have a minor or negligible effect on sand skinks and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and that the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and, (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not over time result in significant cumulative effects to environmental values or resources.

## Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number ESPER0006990 to PMDW Ventures, LLC.

## Authority

The Service provides this notice under section 10(c) of the ESA (16

U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and NEPA (42 U.S.C. 4231 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.305).

**Gianfranco Basili,**

*Acting Field Supervisor, Jacksonville Field Office.*

[FR Doc. 2021-11411 Filed 5-28-21; 8:45 am]

**BILLING CODE 4333-15-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[Docket No. FWS-HQ-IA-2021-0022; FXIA16710900000-212-FF09A30000]

#### Endangered Species; Marine Mammals; Issuance of Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permits.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

**ADDRESSES:** Information about the applications for the permits listed in this notice is available online at [www.regulations.gov](http://www.regulations.gov). See

**SUPPLEMENTARY INFORMATION** for details.

**FOR FURTHER INFORMATION CONTACT:** Timothy MacDonald, by phone at 703-358-2185, via email at [DMAFR@fws.gov](mailto:DMAFR@fws.gov), or via the Federal Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), have issued permits to conduct certain activities with endangered and threatened species in response to permit applications that we received under the authority of section 10(a)(1)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)

After considering the information submitted with each permit application and the public comments received, we issued the requested permits subject to certain conditions set forth in each permit. For each application for an endangered species, we found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

**Availability of Documents**

The permittees' original permit application materials, along with public

comments we received during public comment periods for the applications, are available for review. To locate the application materials and received

comments, go to [www.regulations.gov](http://www.regulations.gov) and search for the appropriate permit number (e.g., 12345C) provided in the following table:

Permit No.	ePermit No.	Applicant	Permit issuance date
<b>Endangered Species</b>			
56547D .....	.....	Institute for the Conservation of Tropical Environments	January 12, 2021.
56679D .....	.....	Tufts University .....	March 3, 2021.
71918D .....	.....	Saint Louis Zoo .....	March 5, 2021.
<b>Marine Mammals</b>			
672624 .....	.....	U.S. Geological Survey (USGS) .....	December 7, 2020.
73634A .....	.....	Seward Association for the Advancement of Marine Science dba Alaska Sealife Center.	December 8, 2020.

**Authorities**

We issue this notice under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act as amended (16 U.S.C. 1361 *et seq.*) and their implementing regulations.

**Timothy MacDonald,**

Information Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2021-11488 Filed 5-28-21; 8:45 am]

BILLING CODE 4333-15-P

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service**

[Docket No. FWS-HQ-IA-2021-0021; FXIA16710900000-212-FF09A30000]

**Foreign Endangered Species; Marine Mammals; Receipt of Permit Applications**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), invite the public to comment on an applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA) and foreign or native species for which the Service has jurisdiction under the Marine Mammal Protection Act (MMPA). With some exceptions, the ESA and the MMPA prohibit activities with listed species unless Federal authorization is issued that allows such activities. The ESA and MMPA also require that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA or MMPA with respect to any endangered species or marine mammals.

**DATES:** We must receive comments by July 1, 2021.

**ADDRESSES:** *Obtaining Documents:* The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at <http://www.regulations.gov> in Docket No. FWS-HQ-IA-2021-0021.

*Submitting Comments:* When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet:* <http://www.regulations.gov>. Search for and submit comments on Docket No. FWS-HQ-IA-2021-0021.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS-HQ-IA-2021-0021; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041-3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:**

Timothy MacDonald, by phone at 703-358-2185, via email at [DMAFR@fws.gov](mailto:DMAFR@fws.gov), or via the Federal Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:****I. Public Comment Procedures***A. How do I comment on submitted applications?*

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an

address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

*B. May I review comments submitted by others?*

You may view and comment on others' public comments at <http://www.regulations.gov>, unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

*C. Who will see my comments?*

If you submit a comment at <http://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, 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. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

## II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and section 104(c) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA and MMPA prohibit certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17. Service regulations regarding permits for any activity otherwise prohibited by the MMPA with respect to any marine mammals are available in title 50 of the Code of Federal Regulations in part 18. Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the marine mammal applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

## III. Permit Application

We invite comments on the following applications.

### A. Endangered Species

Applicant: University of Michigan Museum of Zoology, Ann Arbor, MI; Permit No. 77243D

The applicant requests a permit to import biological samples derived from wild mantled howler monkeys (*Alouatta palliata*), taken in Tabasco, Mexico, for the purpose of scientific research. This notification is for a single import.

Applicant: University of Wisconsin-Madison, Madison, WI; Permit No. PER0004488

The applicant requests a permit to import biological samples from 5 wild-born and 5 captive-born jaguars (*Panthera onca*) for the purpose of scientific research. This notification is for a single import.

Applicant: Duke University Lemur Center, Durham, NC; Permit No. 12767D

The applicant requests to amend their permit to export one additional male and one additional female Coquerel's sifaka (*Propithecus coquereli*), and to amend the destination to Tierpark Berlin, Berlin, Germany, for the purpose of enhancing the propagation or survival of the species. This notification is for a single export.

Applicant: Wright Family LLC, dba J Bar J Ranch, Clarendon, TX; Permit No. 42009B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for Arabian oryx (*Oryx leucoryx*), barasingha (*Rucervus duvaucelii*), and red lechwe (*Kobus leche*) to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Wright Family LLC, dba J Bar J Ranch, Clarendon, TX; Permit No. 42018B

The applicant requests a permit authorizing the culling of excess Arabian oryx (*Oryx leucoryx*) and barasingha (*Rucervus duvaucelii*) from the captive herd maintained at their facility, to enhance the species' propagation and survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Robert MacKnight, Reno, NV; Permit No. 66008D

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

### B. Endangered Marine Mammals and Marine Mammals

Applicant: Wildstar Films, LTD, Washington, DC; Permit No. PER0004906

The applicant requests a permit to conduct photography (both still and video photography) on a non-ESA listed population of northern sea otters (*Enhydra lutris kenyoni*) in Alaska for a total of 10 days, for the purpose of photography. This notification covers activities to be conducted by the applicant over a 1-year period.

## IV. Next Steps

After the comment period closes, we will make decisions regarding permit

issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching <http://www.regulations.gov> for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to [regulations.gov](http://regulations.gov) and search for "12345A".

## V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations, and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and its implementing regulations.

**Timothy MacDonald,**

*Government Information Specialist, Branch of Permits, Division of Management Authority.*

[FR Doc. 2021-11489 Filed 5-28-21; 8:45 am]

**BILLING CODE 4333-15-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[Docket No. FWS-R4-ES-2021-0049; FXES1114040000-212-FF04EF4000]

### Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink, Orange County, FL; Categorical Exclusion

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comment and information.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce receipt of an application from Spring Grove, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink incidental to the construction of a housing development in Orange County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as "low-effect," categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

**DATES:** We must receive your written comments on or before July 1, 2021.

**ADDRESSES:**

*Obtaining Documents:* You may obtain copies of the documents online in Docket No. FWS-R4-ES-2021-0049 at <http://www.regulations.gov>.

*Submitting Comments:* If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R4-ES-2021-0049.

- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS-R4-ES-2021-0049; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

**FOR FURTHER INFORMATION CONTACT:** Erin M. Gawera, by telephone at 904-731-3121 or via email at [erin\\_gawera@fws.gov](mailto:erin_gawera@fws.gov). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1-800-877-8339 for TTY assistance.

**SUPPLEMENTARY INFORMATION:** We, the Fish and Wildlife Service, announce receipt of an application from Spring Grove, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) incidental to the construction of a housing development (project) in Orange County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that this HCP qualifies as "low-effect," categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form.

**Project**

Spring Grove, LLC (Cross Property) requests a 5-year ITP to take sand skinks through the conversion of approximately 9.60 acres (ac) of occupied sand skink foraging and sheltering habitat incidental to the construction of a housing development in Orange County, Florida, on a 204-ac parcel located in Section 18 and 19, Township 24 South, Range 27 East on Parcel ID numbers 18-24-27-0000-00-003, 18-24-27-0000-00-004, 19-24-27-0000-00-001, 19-24-27-0000-00-017, 19-24-27-0000-00-018 and 19-24-27-0000-00-019. The applicant proposes to mitigate for take of the sand skinks by purchasing 19.20 credits from the Lake Wales Ridge Conservation

Bank or another Service-approved conservation bank. The Service would require the applicant to purchase the credits prior to engaging in activities associated with the project.

**Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

**Our Preliminary Determination**

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and the proposed mitigation, would individually and cumulatively have a minor or negligible effect on sand skinks and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and that the HCP is low effect under our NEPA regulations at 43 CFR 419.2005 and 419.2010. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and, (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result in significant cumulative effects to environmental values or resources over time.

**Next Steps**

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number ESPERO007024 to Spring Grove, LLC.

**Authority**

The Service provides this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and NEPA (42 U.S.C. 4321 *et*

*seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.305).

**Gianfranco Basili,**

*Action Field Supervisor, Jacksonville Field Office.*

[FR Doc. 2021-11416 Filed 5-28-21; 8:45 am]

**BILLING CODE 4333-15-P**

**DEPARTMENT OF THE INTERIOR****Geological Survey**

**[GR21EG51TJ50200; OMB Control Number 1028-New]**

**Agency Information Collection Activities; National Digital Trails Project—Trails Data Portal**

**AGENCY:** Geological Survey, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing a new information collection.

**DATES:** Interested persons are invited to submit comments on or before August 2, 2021.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to [gs-info\\_collections@usgs.gov](mailto:gs-info_collections@usgs.gov). Please reference OMB Control Number 1028-New in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Tatyana DiMascio by email at [tdimascio@usgs.gov](mailto:tdimascio@usgs.gov), or by telephone at (303) 202-4206.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality,

utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* A major component of the Department of the Interior's vision is to "Increase access to outdoor recreation opportunities for all Americans so that our people can be healthier, more fully enjoy the wonderful features of their federal lands, and take advantage of hunting, fishing, and other outdoor recreation pursuits that are the roots of the conservation movement." At the direction of DOI, the US Geological Survey is advancing that vision with the launch of the National Digital Trails Network (NDT) project. The two-year project consists of three major goals:

1. Develop a web-based geospatial analysis tool to assist Federal land managers in identifying and prioritizing candidate trails for the connection of existing trails and trail networks.

2. Aid in the creation of a robust nationwide geospatial trails dataset including, at a minimum, trails from key Federal agencies including the Bureau of Land Management, National Park Service, U.S. Fish and Wildlife Service, and U.S. Forest Service.

3. Develop a mobile responsive application that will assist trail stewards, land management agencies, and members of the public in the maintenance of trails information.

This information collection request focuses on Goal 2, the Nationwide Digital Trails Dataset. The National Digital Trails Portal will support development and maintenance of the robust USGS Nationwide Digital Trails Dataset (Goal 2). In turn, the Nationwide Digital Trails Dataset is a primary component of the TRAILS decision support tool (Goal 1) which provides DOI bureaus and trail managers a tool to improve trail connectivity throughout the Nation's public lands.

The National Digital Trails Portal will facilitate an efficient digital trails data submission process and communication between USGS and data providers. Authoritative trail mangers will be able to login to submit their trails data, along with relevant information, for USGS review and integration into the Nationwide Trails Dataset. USGS staff will be able to login to download the submitted data, perform preliminary assessment, and provide status updates for every trail data submission. No data edits or integration will take place within the National Digital Trails Portal.

The following information will be collected for every authoritative data provider that submits trails data for USGS integration: name, email, and organization. This information will allow USGS to identify appropriate point of contact for every data source in the Nationwide Digital Trails Dataset. It may be necessary to reach out to a contact to provide status updates, or to clarify data discrepancies, or to obtain the latest trails data to perform updates to the Nationwide Digital Trails Dataset.

*Title of Collection:* National Digital Trails Project—Trails Data Portal.

*OMB Control Number:* 1028-NEW.

*Form Number:* None.

*Type of Review:* New.

*Respondents/Affected Public:* Federal, state or local government agencies; nonprofit organizations.

*Total Estimated Number of Annual Respondents:* 100.

*Total Estimated Number of Annual Responses:* 100.

*Estimated Completion Time per Response:* 25 minutes on average.

*Total Estimated Number of Annual Burden Hours:* 42 hours.

*Respondent's Obligation:* Voluntary.

*Frequency of Collection:* Occasional.

*Total Estimated Annual Nonhour Burden Cost:* None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**David Brostuen,**

*Director, National Geospatial Technical Operations Center, U.S. Geological Survey.*

[FR Doc. 2021-11017 Filed 5-28-21; 8:45 am]

**BILLING CODE 4338-11-P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731-TA-1071 (Third Review)]**

### Magnesium From China; Institution of a Five-Year Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the antidumping duty order on magnesium from China would be likely to lead to continuation or recurrence of material injury.

Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted June 1, 2021. To be assured of consideration, the deadline for responses is July 1, 2021. Comments on the adequacy of responses may be filed with the Commission by August 13, 2021.

#### FOR FURTHER INFORMATION CONTACT:

Lawrence Jones (202-205-3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

*Background.*—On April 15, 2005, the Department of Commerce ("Commerce") issued an antidumping duty order on imports of magnesium from China (70 FR 19928). Following the five-year reviews by Commerce and the Commission, effective March 11, 2011, Commerce issued a continuation of the antidumping duty order on imports of magnesium metal from China (76 FR 13356). Following the second five-year reviews by Commerce and the Commission, effective July 21, 2016, Commerce issued a continuation of the antidumping duty order on imports of magnesium metal from China (81 FR 47351). The Commission is now

conducting a third review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

**Definitions.**—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined the *Domestic Like Product* as pure and alloy magnesium, primary and secondary magnesium, and ingot (cast) and granular magnesium; certain Commissioners defined the *Domestic Like Product* differently, finding cast and granular magnesium to be separate domestic like products. In its full first five-year review and expedited second five-year review determinations, the Commission defined the *Domestic Like Product* as pure and alloy magnesium, primary and secondary magnesium, and ingot (cast) and granular magnesium.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as consisting of all producers of the domestic like product, including grinders that produce granular magnesium and die casters that recycle magnesium scrap; certain Commissioners defined the *Domestic Industry* differently, finding caster and grinders to be separate industries. In its full first five-year review and expedited second five-year review determinations,

the Commission defined the *Domestic Industry* as consisting of all producers of the domestic like product, including grinders that produce granular magnesium and die casters that recycle magnesium scrap. It also found that die casters engaged in sufficient production-related activity to qualify as domestic producers.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202-205-3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO)*

*and APO service list.*—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Written submissions.*—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 1, 2021. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 13, 2021. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf), elaborates

upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 21-5-490, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

*Information To Be Provided in Response to This Notice of Institution:* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how,

including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2015.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2020, except as noted (report quantity data in metric tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for

the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2020 (report quantity data in metric tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of

*Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2020 (report quantity data in metric tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2015, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product*

produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: May 24, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-11249 Filed 5-26-21; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

### [Investigation Nos. 701-TA-534-537 and 731-TA-1274-1278 (Review)]

#### Certain Corrosion-Resistant Steel Products From China, India, Italy, Korea, and Taiwan; Institution of Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the countervailing duty orders on imports of certain corrosion-resistant steel products from China, India, Italy, and Korea and the revocation of the antidumping duty orders on imports of certain corrosion-resistant steel products from China, India, Italy, Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted June 1, 2021. To be assured of consideration, the deadline for responses is July 1, 2021. Comments on the adequacy of responses may be filed with the Commission by August 13, 2021.

**FOR FURTHER INFORMATION CONTACT:** Lawrence Jones (202-205-3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting

the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—On July 25, 2016, the Department of Commerce ("Commerce") issued countervailing duty orders on imports of certain corrosion-resistant steel products from China, India, Italy, and Korea (81 FR 48387), and antidumping duty orders on imports of certain corrosion-resistant steel products from China, India, Italy, Korea, and Taiwan (81 FR 48390). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

**Definitions.**—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China, India, Italy, Korea, and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission defined the *Domestic Like Product* as consisting of certain corrosion-resistant steel products ("CORE"), that is coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic*

*Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all U.S. producers of CORE.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is July 25, 2016.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202-205-3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Written submissions.*—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 1, 2021. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 13, 2021. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the

Commission's website at [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf), elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 21-5-487, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

*Information To Be Provided in Response to This Notice of Institution:* If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response.

If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term “firm” includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional

prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2020, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2020 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S.

imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2020 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase

production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: May 24, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-11261 Filed 5-28-21; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701-TA-540-543 and 731-TA-1283-1287 and 1290 (Review)]**

### Cold-Rolled Steel Flat Products From Brazil, China, India, Japan, Korea, and the United Kingdom; Institution of Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the countervailing duty orders on imports of cold-rolled steel flat products from Brazil, China, India, and Korea and the revocation of the antidumping duty orders on imports of cold-rolled steel flat products from Brazil, China, India, Japan, Korea, and the United Kingdom would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted June 1, 2021. To be assured of consideration, the deadline for responses is July 1, 2021. Comments on the adequacy of responses may be filed with the Commission by August 13, 2021.

#### FOR FURTHER INFORMATION CONTACT:

Lawrence Jones (202-205-3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—On July 14, 2016, the Department of Commerce ("Commerce") issued antidumping duty orders on imports of cold-rolled steel flat products from Japan and China (81 FR 45955), and a countervailing duty order on imports from China (81 FR 45690). On September 20, 2016, Commerce issued antidumping duty orders on imports of cold-rolled steel flat products from Brazil, India, Korea, and the United Kingdom (81 FR 64432). Additionally, on September 20, 2016, Commerce issued countervailing duty orders on imports of cold-rolled steel flat products from Brazil, India, and Korea (81 FR 64436). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

**Definitions.**—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Brazil, China, India, Japan, Korea, and the United Kingdom.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission defined the *Domestic Like Product* as consisting of cold-rolled steel that was coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all U.S. producers of cold-rolled steel.

(5) The *Order Date* is the date that the countervailing duty orders under review became effective. In these reviews, the *Orders Date* is July 14, 2016.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

**Participation in the proceeding and public service list.**—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter

as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202-205-3408.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.**—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Certification.**—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

**Written submissions.**—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified

below. The deadline for filing such responses is July 1, 2021. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 13, 2021. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf), elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 21-5-488, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

**Inability to provide requested information.**—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested

party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the reviews.

**Information To Be Provided in Response to This Notice of Institution:** If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in

§ 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2020, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently

completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2020 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2020 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad).

Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: May 24, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-11267 Filed 5-28-21; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-473 and 731-TA-1173 (Second Review)]

### Potassium Phosphate Salts From China; Scheduling of Expedited Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (“the Act”) to determine whether revocation of the countervailing and antidumping duty orders on potassium phosphate salts from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

**DATES:** February 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Julie Duffy (202–708–2579), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these reviews may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

**Background.**—On February 5, 2021, the Commission determined that the domestic interested party group response to its notice of institution (85 FR 69352, November 2, 2020) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.<sup>1</sup> Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission’s Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary’s Office will accept only electronic filings at this time. Filings must be made through the Commission’s Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

<sup>1</sup> A record of the Commissioners’ votes is available from the Office of the Secretary and at the Commission’s website.

**Staff report.**—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on May 27, 2021, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission’s rules.

**Written submissions.**—As provided in section 207.62(d) of the Commission’s rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,<sup>2</sup> and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before June 3, 2021 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by June 3, 2021. However, should the Department of Commerce (“Commerce”) extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce’s final results is three business days after the issuance of Commerce’s results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission’s rules. The Commission’s *Handbook on Filing Procedures*, available on the Commission’s website at [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf), elaborates upon the Commission’s procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Determination.**—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its

authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission’s rules.

By order of the Commission.

Issued: May 26, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021–11448 Filed 5–28–21; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1070B (Third Review)]**

### Tissue Paper From China; Institution of a Five-Year Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (“the Act”), as amended, to determine whether revocation of the antidumping duty order on tissue paper from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted June 1, 2021. To be assured of consideration, the deadline for responses is July 1, 2021. Comments on the adequacy of responses may be filed with the Commission by August 13, 2021.

**SUPPLEMENTARY INFORMATION:**

Lawrence Jones (202–205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

<sup>2</sup> The Commission has found the joint response to its notice of institution filed on behalf of ICL Performance Products LP, a domestic producer of both dipotassium phosphate (“DKP”) and tetrapotassium pyrophosphate (“TKPP”), and Prayon, Inc., a domestic producer of TKPP, to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

**Background.**—On March 30, 2005, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of tissue paper from China (70 FR 16223). Following the five-year reviews by Commerce and the Commission, effective July 20, 2010, Commerce issued a continuation of the antidumping duty order on imports of tissue paper from China (75 FR 42067). Following the second five-year reviews by Commerce and the Commission, effective July 12, 2016, Commerce issued a continuation of the antidumping duty order on imports of tissue paper from China (81 FR 45128). The Commission is now conducting a third review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission’s Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission’s determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

**Definitions.**—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination and its expedited first five-year review determination, the Commission defined the *Domestic Like Product* as one like product, consisting of all tissue paper; certain Commissioners defined the *Domestic Like Product* differently, consisting of two domestic like products—bulk tissue paper and consumer tissue paper. In its full second five-year review determination, the Commission defined the *Domestic Like Product* as one like product, consisting of all tissue paper.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose

collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first five-year review determination, the Commission defined the *Domestic Industry* as all domestic producers of tissue paper; certain Commissioners defined two domestic industries, one producing bulk tissue paper and the other producing consumer tissue paper. In its full second five-year review determination, the Commission defined the *Domestic Industry* as all domestic producers of tissue paper.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission’s rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission’s designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008).

Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission

employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202-205-3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to § 207.7(a) of the Commission’s rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to § 207.3 of the Commission’s rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter’s knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Written submissions.*—Pursuant to § 207.61 of the Commission’s rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 1, 2021. Pursuant to § 207.62(b) of the Commission’s rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 13, 2021. All written submissions must conform with the provisions of § 201.8 of the Commission’s rules; any submissions that contain BPI must also conform with

the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf), elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 21-5-489, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

*Information To Be Provided in Response to This Notice of Institution:* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2015.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the

following information on your firm's operations on that product during calendar year 2020, except as noted (report quantity data in 1,000 square meters and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2020 (report quantity data in 1,000 square meters and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or

countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2020 (report quantity data in 1,000 square meters and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2015, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among

different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: May 24, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-11252 Filed 5-28-21; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

### [Investigation No. 337-TA-1259]

#### Notice of Commission Determination Not To Review an Initial Determination Granting Complainants' Motion for Leave To Amend the Complaint and Notice of Investigation; Certain Toner Supply Containers and Components Thereof (I)

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 5) of the presiding administrative law judge ("ALJ") granting the complainants' motion for leave to amend the complaint and notice of investigation.

**FOR FURTHER INFORMATION CONTACT:** Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). General

information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** On April 13, 2021, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), based on a complaint filed by Canon Inc. of Japan; Canon U.S.A., Inc. of Melville, New York; and Canon Virginia, Inc. of Newport News, Virginia (collectively, "Complainants"). See 86 FR 19284-86. The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, sale for importation, or sale after importation into the United States of certain toner supply containers and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,209,667 ("the '667 patent"); 10,289,060 ("the '060 patent"); 10,289,061 ("the '061 patent"); 10,295,957 ("the '957 patent"); 10,488,814 ("the '814 patent"); 10,496,032 ("the '032 patent"); 10,496,033 ("the '033 patent"); 10,514,654 ("the '654 patent"); 10,520,881 ("the '881 patent"); 10,520,882 ("the '882 patent"); 8,565,649; 9,354,551; and 9,753,402. *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation names twenty-six respondents, including Do It Wiser, LLC d/b/a Image Toner of Wilmington, Delaware. *Id.* At institution, the Commission severed the investigation into two investigations. The present investigation was instituted to determine whether there is a violation of section 337 in the importation, sale for importation, or sale within the United States after importation of toner supply containers and components thereof by reason of infringement of claims 1, 3, 6-8, and 11 of the '667 patent; claims 1, 2, and 6-8 of the '060 patent; claims 1-3, 6-8, and 11 of the '061 patent; claims 1, 2, 4, 7-9 and 12 of the '957 patent; claims 1, 4, 7-9, and 12 of the '814 patent; claims 1, 4, 7-9, 12, 50, 53, 56-58, and 61 of the '032 patent; claims 1, 5, 8-10, 13, 14, 18, 21-23, and 26 of the '033 patent; claims 1, 3-5, 46, and 48-50 of the '654 patent; claims 1, 5, 8-10, and 13 of the '881 patent; and claims 1 and 6-8 of the '882 patent. *Id.* The Office of Unfair Import Investigations is also a party to the investigation. *Id.*

On April 27, 2021, Complainants filed an unopposed motion seeking leave to file an amended complaint and notice of investigation to correct the name of originally-identified respondent, "Do It Wiser, LLC d/b/a Image Toner," to "Do It Wiser, Inc. d/b/a Image Toner." No responses to the motion were filed.

On May 13, 2021, the ALJ issued the subject ID (Order No. 5) granting Complainants' motion for leave to amend the complaint and notice of investigation. Order No. 5 (May 13, 2021). The subject ID finds that Complainants' motion is supported by good cause pursuant to Commission Rule 210.14(b) (19 CFR 210.14(b)) and that there is no prejudice to any party if the motion is granted. No party petitioned for review of the subject ID.

The Commission has determined not to review the subject ID. The name of respondent "Do It Wiser, LLC d/b/a Image Toner" is corrected to "Do It Wiser, Inc. d/b/a Image Toner."

The Commission vote for this determination took place on May 25, 2021.

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the complainant complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 25, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-11389 Filed 5-28-21; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### State All Payer Claims Databases Advisory Committee—Notice of Virtual Meetings

**AGENCY:** Employee Benefits Security Administration (EBSA), Department of Labor (DOL).

**ACTION:** Notice.

**SUMMARY:** This notice announces meetings of the State All Payer Claims Databases Advisory Committee (hereinafter the Committee). This notice provides information to members of the public who may be interested in attending the meetings or providing written comments related to the work of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

**DATES:** The Committee meetings will be held virtually on June 17, 2021, June 21, 2021, and June 24, 2021. Key dates associated with these meetings, including deadlines for registration are discussed in the **SUPPLEMENTARY INFORMATION** section below.

**ADDRESSES:** Each meeting will be held via webinar. The webinar links and login information will be available at DOL's Committee website: <https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/state-all-payer-claims-databases-advisory-committee>.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Schumacher, Designated Federal Officer, EBSA, DOL, by sending an email to [SAPCDAC@dol.gov](mailto:SAPCDAC@dol.gov). For press inquiries please contact Grant Vaught, Office of Public Affairs, DOL at 202-693-4672.

**SUPPLEMENTARY INFORMATION:** The Committee is mandated by section 735 of the Employee Retirement Income Security Act of 1974 as added by section 115(b) of the No Surprises Act, enacted as part of the Consolidated Appropriations Act, 2021, div. BB, tit. I, Public Law 116-260 (Dec. 27, 2020). The Committee is governed by the provisions of the FACA, as amended, 5 U.S.C. App.2.

The Committee will advise the Secretary of Labor on the standardized reporting format for the voluntary reporting by group health plans to State All Payer Claims Databases. Reporting will include medical claims, pharmacy claims, dental claims, and eligibility and provider files collected from private and public payers. The Committee will also advise the Secretary on what guidance is necessary to provide to States on the process by which States

may collect such data in the standardized reporting format.

The Committee will be responsible for issuing a report that includes recommendations on the establishment of the format and guidance to the Secretary of Labor and certain congressional committees no later than 180 days after the date of enactment of the Consolidated Appropriations Act, 2021.

The Committee meetings will be held on June 17, 2021, June 21, 2021, and June 24, 2021, via webinar. Each meeting will begin at 9:30 a.m. and end at approximately 5:00 p.m., with a one hour break for lunch. The following are key dates for the 3 meetings, including registration deadline:

#### Meeting on June 17, 2021

*1. Deadline for Registration without Oral Presentation:* June 15, 2021. Individuals can register for the meeting by visiting the Committee website: <https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/state-all-payer-claims-databases-advisory-committee>.

*2. Deadline for Registration of Oral Presentations:* June 14, 2021. Requests should be submitted by email to [SAPCDAC@dol.gov](mailto:SAPCDAC@dol.gov).

*3. Deadline for Submission of Oral Remarks and Written Comments:* June 14, 2021. Remarks and comments should be submitted by email to [SAPCDAC@dol.gov](mailto:SAPCDAC@dol.gov).

*4. Deadline for Requesting Special Accommodations:* June 14, 2021. Requests should be submitted by email to [SAPCDAC@dol.gov](mailto:SAPCDAC@dol.gov).

#### Meeting on June 21, 2021

*1. Deadline for Registration without Oral Presentation:* June 18, 2021. Individuals can register for the meeting by visiting the Committee website: <https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/state-all-payer-claims-databases-advisory-committee>.

*2. Deadline for Registration of Oral Presentations:* June 17, 2021. Requests should be submitted by email to [SAPCDAC@dol.gov](mailto:SAPCDAC@dol.gov).

*3. Deadline for Submission of Oral Remarks and Written Comments:* June 17, 2021. Remarks and comments should be submitted by email to [SAPCDAC@dol.gov](mailto:SAPCDAC@dol.gov).

*4. Deadline for Requesting Special Accommodations:* June 17, 2021. Requests should be submitted by email to [SAPCDAC@dol.gov](mailto:SAPCDAC@dol.gov).

#### Meeting on June 24, 2021

*1. Deadline for Registration without Oral Presentation:* June 22, 2021. Individuals can register for the meeting by visiting the Committee website:

<https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/state-all-payer-claims-databases-advisory-committee>.

**2. Deadline for Registration of Oral Presentations:** June 21, 2021. Requests should be submitted by email to [SAPCDAC@dol.gov](mailto:SAPCDAC@dol.gov).

**3. Deadline for Submission of Oral Remarks and Written Comments:** June 21, 2021. Remarks and comments should be submitted by email to [SAPCDAC@dol.gov](mailto:SAPCDAC@dol.gov).

**4. Deadline for Requesting Special Accommodations:** June 21, 2021. Requests should be submitted by email to [SAPCDAC@dol.gov](mailto:SAPCDAC@dol.gov).

The meetings will focus on the various issues related to all payer claims databases as well as a general discussion of the work plan and recommendations for the report that must be submitted by the Committee. Additional details about the agenda items and topics, as well as agenda updates, will be available at on the Committee's website: <https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/state-all-payer-claims-databases-advisory-committee>.

Dated: May 26, 2021.

**Ali Khawar,**

*Acting Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 2021-11475 Filed 5-28-21; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Mine Safety and Health Administration Grant Performance Reports

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before July 1, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open

for Public Comments” or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

#### FOR FURTHER INFORMATION CONTACT:

Crystal Rennie by telephone at 202-693-0456 or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** MSHA grantees are required by DOL regulations to submit project and final reports. Grantees are also required to submit final reports no later than 90 days after the end of the grant period. Technical Project Reports: A grantee submits a technical project report to MSHA no later than 30 days after quarterly deadlines. Technical project reports provide both quantitative and qualitative information and a narrative assessment of performance for the preceding three-month period. This includes the current grant progress against the overall grant goals. Between reporting dates, the grantee informs MSHA of significant developments or problems affecting the organization's ability to accomplish the work. Final Reports: At the end of the grant period, each grantee provides a project summary of its technical project reports, an evaluation report, and a close-out financial report. These final reports are due no later than 90 days after the end of the 12-month performance period. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 18, 2020 (85 FR 82522).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not

display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

**Agency:** DOL-MSHA.

**Title of Collection:** Mine Safety and Health Administration Grant Performance Reports.

**OMB Control Number:** 1219-0154.

**Affected Public:** State, Local, and Tribal Governments.

**Total Estimated Number of Respondents:** 50.

**Total Estimated Number of Responses:** 250.

**Total Estimated Annual Time Burden:** 625 hours.

**Total Estimated Annual Other Costs Burden:** \$0.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**Crystal Rennie,**

*Senior PRA Analyst.*

[FR Doc. 2021-11432 Filed 5-28-21; 8:45 am]

**BILLING CODE 4510-43-P**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register** and two were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

**DATES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://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:

Suzanne H. Plimpton, Reports Clearance

Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to [splimpto@nsf.gov](mailto:splimpto@nsf.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703-292-7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### SUPPLEMENTARY INFORMATION:

*Summary of Comments on the Survey of Doctorate Recipients and NSF's Responses:* As required by 5 CFR 1320.8(d), comments on the information collection activities as part of this study were solicited through the publication of a 60-Day Notice in the **Federal Register** on 5 February 2021, at 86 FR 8384. We received two comments. The nature of each comment and our responses are summarized below.

*Comment:* On 5 February 2021, Dr. Andrew Reamer of George Washington University sent an email to NSF on behalf of the American Economic Association's Committee on Economic Statistics. He requested the draft information collection request (ICR) materials for the 2021 SDR and asked whether any changes were proposed for the 2021 SDR compared to the 2019 SDR.

*Response:* NSF responded to Dr. Reamer on 2 February 2021, explaining that the 2021 SDR ICR materials were in the process of being prepared and that there were no substantive changes planned. He was directed to the 2019 SDR questionnaires on the NSF website, which would be updated to reflect the survey year. He was also informed that the same instrument, with updates to reflect survey year and modifications to accommodate the circumstances of the coronavirus pandemic, will be used for the 2021 cycle.

*Comment:* NCSES received a comment on 17 March 2021 from Dr. Jon Freeman representing the American Association for the Advancement of

Science (AAAS) and the American Educational Research Association (AERA). The commenters requested that NCSES include measures of sexual orientation and gender identity on the SDR and on other NCSES surveys (specifically, the National Survey of College Graduates and the Survey of Earned Doctorates).

*Response:* NCSES informed the commenters that it continues to actively engage on the Federal Committee on Statistical Methodology's (FCSM) Working Group on Measuring Sexual Orientation and Gender Identity and described its research efforts for development and fielding possible questionnaire additions to address the topic. NCSES informed the commenters that it does not intend to include these measures in the 2021 SDR.

*Title of Collection:* 2021 Survey of Doctorate Recipients.

*OMB Approval Number:* 3145-0020.

*Summary of Collection:* The purpose of this panel survey is to collect data that will be used to provide national estimates on the doctoral science and engineering workforce and changes in their employment, education, and demographic characteristics. The SDR is sponsored by the National Center for Science and Engineering Statistics (NCSES) within the NSF and by the National Institutes of Health.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to "... provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government." The SDR is designed to comply with these mandates by providing information on the supply and utilization of the nation's doctoral level scientists and engineers.

*Use of the Information:* The NSF uses the information from the SDR to prepare congressionally-mandated reports such as *Women, Minorities and Persons with Disabilities in Science and Engineering* and *Science and Engineering Indicators*. NCSES also produces, on a biennial basis, a set of statistical tables from the SDR, and publishes statistics from the SDR in other reports.

*Expected Respondents:* A statistical sample of 130,938 individuals who had earned a research doctorate degree from a U.S. academic institution in the fields of science, engineering, or health (SEH) will be contacted in 2021; these individuals may reside in the U.S. or abroad. As with prior SDR data collection cycles, the sample consists of all eligible cases from the previous

cycle, as well as a sample of new doctoral graduates, who received their doctorate between 1 July 2017 and 30 June 2019. In addition, the sample may include 5,000 cases that will be part of a non-production bridge panel designed to quantify the potential impact of question wording modifications on key survey estimates. Another 9% of the production sample may submit an inter-round updated contact form that takes about 3 minutes to complete.

*Estimate of Burden:* NCSES expects the overall 2021 SDR response rate to be approximately 70 percent. The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, based on 2019 SDR completion times, NCSES estimates an average completion time of approximately 21 minutes. NCSES estimates that the average annual burden for the 2021 survey cycle over the course of the three-year OMB clearance period will be no more than 10,882 hours [(130,938 individuals × 70% response × 21 minutes) + (125,938 × 9% participation × 3 minutes)]/3 years/60 minutes.

Dated: May 26, 2021.

**Suzanne H. Plimpton,**

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021-11493 Filed 5-28-21; 8:45 am]

**BILLING CODE 7555-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-295, 50-304, and 72-1037; NRC-2019-0236]

### In the Matter of ZionSolutions, LLC and Exelon Generation Company, LLC; Zion Nuclear Power Station, Units 1 and 2

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct transfer of license; extending effectiveness of order.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an Order to extend until November 26, 2021, the effectiveness of a November 26, 2019, order, which approved the direct transfer of Facility Operating License Nos. DPR-39 and DPR-48 for Zion Nuclear Power Station (ZNPS), Units 1 and 2, respectively, and the general license for the ZNPS independent spent fuel storage installation from the current holder, ZionSolutions, LLC, to Exelon Generation Company, LLC and amended the facility operating licenses for administrative purposes to reflect the transfer.

**DATES:** The Order was issued on May 12, 2021 and was effective upon issuance.

**ADDRESSES:** Please refer to Docket ID NRC-2019-0236 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-2019-0236. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: [Stacy.Schumann@nrc.gov](mailto: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](mailto:pdr.resource@nrc.gov). The written application for extending the effectiveness of the transfer order is available in ADAMS under Accession No. ML21112A164. The order extending the effectiveness of the approval of the transfer of licenses and conforming amendments is available in ADAMS under Accession No. ML21110A606.

- **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](mailto:pdr.resource@nrc.gov) or call 1-800-397-4209 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:** Marlayna Doell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3178; email: [Marlayna.Doell@nrc.gov](mailto:Marlayna.Doell@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The text of the order is attached.

Dated: May 25, 2021.

For the Nuclear Regulatory Commission.

**Bruce A. Watson,**

*Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.*

**Attachment—Order Extending the Effectiveness of the Approval of the Transfer of Licenses and Conforming Amendments**

In the Matter of *ZionSolutions, LLC* and Exelon Generation Company, LLC

Zion Nuclear Power Station, Units 1 and 2; EA-19-125

Docket Nos. 50-295, 50-304, and 72-1037; License Nos.: DPR-39 and DPR-48

Order Extending the Effectiveness of the Approval of the Transfer of Licenses and Conforming Amendments

**I**

*ZionSolutions, LLC* is the holder of U.S. Nuclear Regulatory Commission (NRC, the Commission) Facility Operating License Nos. DPR-39 and DPR-48 for the Zion Nuclear Power Station, Units 1 and 2, respectively (ZNPS), and the associated general license for the ZNPS independent spent fuel storage installation (ISFSI), which are located in Lake County, Illinois. *ZionSolutions, LLC* is authorized to possess and maintain ZNPS and the ZNPS ISFSI. Operation of ZNPS is no longer authorized under these licenses.

**II**

By Order dated November 26, 2019 (Transfer Order), the Commission consented to the direct transfer of the ZNPS licenses from *ZionSolutions, LLC* to Exelon Generation Company, LLC and approved draft conforming administrative license amendments in accordance with Sections 50.80, "Transfer of licenses," 72.50, "Transfer of license," and 50.90, "Application for amendment of license, construction permit, or early site permit," of Title 10 of the *Code of Federal Regulations* (10 CFR). By its terms, the Transfer Order becomes null and void if the transfer is not completed within one year (*i.e.*, by November 26, 2020); provided, however, that upon written application and for good cause shown, such date may be extended by order. By letter dated August 27, 2020, *ZionSolutions, LLC* submitted a written application to extend the effectiveness of the Transfer Order by six months, until May 26, 2021. That request was approved by Order dated October 21, 2020.

**III**

By letter dated April 15, 2021, *ZionSolutions, LLC* submitted a written application to extend the effectiveness of the Transfer Order by an additional six months, until November 26, 2021. As stated in the application, responses to requests for additional information regarding ZNPS Final Status Survey Final Reports (FSSRs) and their associated Release Records are currently under review by the NRC staff. The extension would provide the NRC staff with additional time to assess the responses provided by *ZionSolutions, LLC* and make a final determination regarding the release of land for unrestricted use.

Based on the above, the NRC staff has determined that *ZionSolutions, LLC* has shown good cause for extending the effectiveness of the Transfer Order by an additional six months, as requested.

**IV**

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Sections 2201(b), 2201(i), and 2234; and 10 CFR 50.80 and 10 CFR 72.50, *it is hereby ordered* that the effectiveness of the Transfer Order dated November 26, 2019, is extended until November 26, 2021. Should the subject license transfer from *ZionSolutions, LLC* to Exelon Generation Company, LLC not be completed by November 26, 2021, the Transfer Order shall become null and void; provided, however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the written application for extension dated April 15, 2021, which is available electronically through the NRC's Agencywide Documents Access and Management System (ADAMS) in the NRC Library at <https://www.nrc.gov/reading-rm/adams.html> under Accession No. ML21112A164. Persons who encounter problems with ADAMS should contact the NRC's Public Document Room reference staff by telephone at 1-800-397-4209 or 301-415-4737 or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

Dated this 12th day of May 2021.

For the Nuclear Regulatory Commission

**John W. Lubinski,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2021-11390 Filed 5-28-21; 8:45 am]

**BILLING CODE 7590-01-P**

**NUCLEAR REGULATORY  
COMMISSION**

[NRC-2021-0042]

**Emergency Response Planning and  
Preparedness for Nuclear Power  
Reactors**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Regulatory guide; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 6 to Regulatory Guide (RG), RG 1.101, "Emergency Response Planning and Preparedness for Nuclear Power Reactors." This revision of RG 1.101 endorses Revision 0 of the Nuclear Energy Institute (NEI) white paper, "Implementing a 24-Month Frequency for Emergency Preparedness Program Reviews," issued in November 2019, and Appendix A, "Recommended Drill and Exercise Objectives," to NEI 06-04, "Conducting a Hostile Action-Based Emergency Response Drill," Revision 3, issued September 2016. In addition, this revision includes guidance found in previous revisions of RG 1.101, updated NRC guidance documents, and other documents previously endorsed by the NRC to consolidate the list of these guidance documents into a single revision of the RG.

**DATES:** Revision 6 to RG 1.101 is available on June 1, 2021.

**ADDRESSES:** Please refer to Docket ID NRC-2021-0042 when contacting the NRC about the availability of information regarding this document. You may access 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-2021-0042. 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 individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

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

available in ADAMS) is provided the first time that a document is referenced.

- **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. (EST), Monday through Friday, except Federal holidays.

Revision 6 to RG 1.101 and the regulatory analysis may be found in ADAMS under Accession Nos. ML21111A090 and ML21004A168 respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

**FOR FURTHER INFORMATION CONTACT:** Charles Murray, Office of Nuclear Security and Incident Response, telephone: 301-287-9246, email: *Charles.Murray@nrc.gov* and Mekonen Bayssie, Office of Nuclear Regulatory Research, telephone: 301-415-1669, email: *Mekonen.Bayssie@nrc.gov*. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

**SUPPLEMENTARY INFORMATION:**

**I. Discussion**

The NRC is issuing a revision to an existing guide in the NRC's "Regulatory Guide" series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

Revision 6 of RG 1.101 endorses and updates guidance that is available to licensees and applicants on methods acceptable to the NRC staff for complying with the NRC's regulations for emergency response plans and preparedness at nuclear power reactors. This RG applies to light water reactors, including those of an advanced design (e.g., AP1000); small modular reactors and other new non-light water reactor technologies will have design-specific RGs to support development of their emergency plans. This revision endorses Revision 0 of the NEI white paper, "Implementing a 24-Month Frequency for Emergency Preparedness Program Reviews," issued November 2019 and Appendix A, "Recommended Drill and Exercise Objectives," to NEI 06-04, "Conducting a Hostile Action-Based Emergency Response Drill," Revision 3,

issued September 2016. This RG revision also includes guidance found in previous revisions of RG 1.101, updated NRC guidance documents, and other documents previously endorsed by the NRC to consolidate the list of these guidance documents into a single revision of the RG.

Revision 6 of RG 1.101 was issued with a temporary identification of Draft Regulatory Guide, DG-1357 (ADAMS Accession No. ML21007A330).

**II. Additional Information**

The NRC published a notice of availability of DG-1357 in the **Federal Register** on March 17, 2021, (86 FR 14651) for a 30-day public comment period. The public comment period ended on April 16, 2021, and the NRC received one public comment submission. The public comment and the NRC's response to the comment are available in ADAMS under Accession No. ML21111A091.

**III. Congressional Review Act**

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

**IV. Backfitting, Forward Fitting, and Issue Finality**

Revision 6 of RG 1.101 describes methods acceptable to the NRC staff for complying with the NRC's regulations to meet the regulatory requirements for emergency response planning and preparedness. Issuance of this RG does not constitute backfitting as defined in section 50.109 of the *Code of Federal Regulation* (10 CFR), "Backfitting," and as described in NRC Management Directive (MD) 8.4, "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests"; constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52, "Licenses, certifications, and approvals for nuclear power plants." As explained in RG 1.101, applicants and licensees are not required to comply with the positions set forth in RG 1.101.

Dated: May 25, 2021.

For the Nuclear Regulatory Commission.

**Meraj Rahimi,**

*Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 2021-11434 Filed 5-28-21; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-528, STN 50-529, STN 50-530, and 72-44; NRC-2021-0031]

### In the Matter of Arizona Public Service Company, Public Service Company of New Mexico, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, and Independent Spent Fuel Storage Installation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Indirect transfer of licenses; order.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an Order approving the application dated December 2, 2020, as supplemented by letters dated February 26, 2021 and May 14, 2021, filed by Arizona Public Service Company (APS), on behalf of Public Service Company of New Mexico (PNM), Avangrid, Inc. (Avangrid), and their corporate affiliates. The application sought NRC consent to the indirect transfer of PNM's interests in Renewed Facility Operating License Nos. NPF-41, NPF-51, and NPF-74 for the Palo Verde Nuclear Generating Station (Palo Verde), Units 1, 2, and 3, respectively, and the general license for the Palo Verde Independent Spent Fuel Storage Installation (ISFSI) (together, the Facility). No physical changes to the Facility or operational changes were proposed in the application.

**DATES:** The Order was issued on May 25, 2021, and is effective for 1 year.

**ADDRESSES:** Please refer to Docket ID NRC-2021-0031 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-2021-0031. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-287-0624; 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*. The license transfer Order and the NRC staff safety evaluation supporting the Order are available in ADAMS under ADAMS Package Accession No. ML21119A050.

- **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:** Siva P. Lingam, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1564, email: *Siva.Lingam@nrc.gov*.

**SUPPLEMENTARY INFORMATION:** The text of the Order is attached.

Dated: May 25, 2021.

For the Nuclear Regulatory Commission.

**Siva P. Lingam,**

*Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

### Attachment—Order Approving Indirect Transfer of Licenses

#### United States of America

#### Nuclear Regulatory Commission

In the Matter of: Arizona Public Service Company, Public Service Company of New Mexico, Palo Verde Nuclear Generating Station, Units 1, 2, 3, and Independent Spent Fuel Storage Installation, Docket Nos. STN 50-528, STN 50-529, STN 50-530, and 72-44, License Nos. NPF-41, NPF-51, and NPF-74.

### Order Approving Indirect Transfer of Licenses

#### I

Arizona Public Service Company (APS) is the licensed operator and a licensed co-owner of Renewed Facility Operating License Nos. NPF-41, NPF-51, and NPF-74 for the Palo Verde Nuclear Generating Station (Palo Verde), Units 1, 2, and 3, respectively, and the general license for the Palo Verde Independent Spent Fuel Storage Installation (ISFSI). Palo Verde is located in Maricopa County, Arizona. The other licensed co-owners (tenants-in-common), Salt River Project Agricultural Improvement and Power District; Southern California Edison Company; El Paso Electric Company; Public Service Company of New Mexico (PNM); Southern California Public Power Authority; and Los Angeles

Department of Water and Power, hold possession-only rights for these licenses (i.e., they are not licensed to operate the facility).

#### II

By application dated December 2, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20337A344), as supplemented by letters dated February 26, 2021, and May 14, 2021 (ADAMS Accession Nos. ML21061A156 and ML21134A244, respectively), APS, on behalf of PNM, Avangrid, Inc. (Avangrid), and their corporate affiliates (together, the Applicants), requested, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Sections 50.80 and 72.50, that the U.S. Nuclear Regulatory Commission (NRC, the Commission) consent to the indirect transfer of PNM's interests in Renewed Facility Operating License Nos. NPF-41, NPF-51, and NPF-74 for Palo Verde Units 1, 2, and 3, respectively, and the general license for the Palo Verde ISFSI to Avangrid.

According to the application, PNM currently owns a 10.2 percent tenant-in-common interest and holds possession-only rights in the NRC licenses. The proposed indirect license transfer would result from Avangrid acquiring PNM and its parent holding company as its subsidiaries, thereby owning 100 percent of the shares in PNM. APS owns a 29.1 percent tenant-in-common interest and holds both operating and possession rights in the NRC licenses. Further, APS operates, and would continue to operate, each of the Palo Verde units and the ISFSI pursuant to the operating rights granted to it under the license of each Palo Verde unit. The remaining tenant-in-common co-owners that hold possession-only rights in the NRC licenses are: Salt River Project Agricultural Improvement and Power District (17.49 percent); Southern California Edison Company (15.8 percent); El Paso Electric Company (15.8 percent); Southern California Public Power Authority (5.91 percent); and Los Angeles Department of Water and Power (5.7 percent). The proposed transaction would implicate only an indirect upstream change in control over PNM's possession-only rights in the NRC licenses. The proposed transaction would not involve or implicate any change in PNM's rights and obligations under any of the NRC licenses, nor would it implicate APS's or any other possession-only co-owners' rights and obligations under any of the NRC licenses.

No physical changes or operational changes are proposed in the application.

A notice of the application and opportunity to comment, request a hearing, and petition for leave to intervene on the application was published in the **Federal Register** (FR) on January 27, 2021 (86 FR 7310). The NRC did not receive any comments or hearing requests on the application.

Under 10 CFR 50.80 and 10 CFR 72.50, no license for a production or utilization facility or ISFSI, or any right thereunder, shall be transferred, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Upon review of the information in the application, and other information before the Commission, the NRC staff has determined that PNM can indirectly transfer its 10.2 percent tenant-in-common interest and possession-only rights in the NRC licenses to Avangrid. The proposed transferee is qualified to be the indirect holder of the licenses and the indirect transfer of the licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the condition set forth below.

The findings set forth above are supported by an NRC staff safety evaluation dated the same date as this Order, which is available at ADAMS Accession No. ML21118B028.

### III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80 and 10 CFR 72.50, *it is hereby ordered* that the application regarding the proposed indirect license transfer is approved for Palo Verde Units 1, 2, and 3, and the Palo Verde ISFSI, subject to the following condition.

Avangrid, Inc. must ensure that:

1. At the time of the indirect license transfer, Public Service Company of New Mexico ("PNM") will implement the Negation Action Plan provided as Attachment 2 to Enclosure 1 of the Application for Order Approving Indirect Transfers of Control of Licenses dated December 2, 2020 (ADAMS Accession No. ML20337A344).

2. The sole shareholder of PNM must consent to amend the Bylaws of PNM to provide that authority over PNM's interests in Palo Verde be delegated to the President of PNM.

3. PNM shall provide thirty (30) days prior written notice to the Director, Office of Nuclear Reactor Regulation, before any further material amendment to Article IV, Section 2 of PNM's Bylaws.

4. The President of PNM must be a U.S. citizen.

5. The PNM President may delegate authority to one or more designated PNM representatives for Palo Verde co-owner matters, and these representatives also must be U.S. citizens under the supervision of the PNM President.

6. The amendment to the Bylaws must specifically provide that the sole shareholder or any of its parent companies cannot remove the PNM President or fail to reappoint the PNM President based upon a decision made with respect to Palo Verde.

7. The PNM President must sign a certificate acknowledging the duties owed to the NRC and the United States regarding the prohibition of foreign ownership, control or domination of any reactor license.

*It is further ordered* that after receipt of all required regulatory approvals of the proposed indirect transfer action, the Applicants shall inform the Director of the NRC Office of Nuclear Reactor Regulation in writing of such receipt, and of the date of the closing of the transfer, no later than 2 business days prior to the date of the closing of the transfer. Should the proposed indirect transfer not be completed within 1 year of the date of this Order, this Order shall become null and void, provided, however, that upon written application and for good cause shown, such date may be extended by order. The condition of this Order may be amended upon application by the Applicants and approval by the Director of the Office of Nuclear Reactor Regulation.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated December 2, 2020, as supplemented by letters dated February 26, 2021, and May 14, 2021, and the NRC staff's safety evaluation dated the same date as this Order, which are available for public inspection electronically through ADAMS in the NRC Library at <https://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff by telephone at 1-800-397-4209 or 301-415-4737 or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

Dated: May 25, 2021.

For the Nuclear Regulatory Commission.

/RA/

Caroline L. Carusone,

*Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2021-11433 Filed 5-28-21; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[NRC-2021-0109]

### Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of one amendment request. The amendment request is for Pilgrim Nuclear Power Station. For the amendment request, the NRC proposes to determine that it involves no significant hazards consideration (NSHC). Because the amendment request contains sensitive unclassified non-safeguards information (SUNSI) and safeguards information (SGI), an order imposes procedures to obtain access to SUNSI and SGI for contention preparation by person(s) who file a hearing request or petition for leave to intervene.

**DATES:** Comments must be filed by July 1, 2021. A request for a hearing or petitions for leave to intervene must be filed by August 2, 2021. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to SUNSI is necessary to respond to this notice must request document access by June 11, 2021.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2021-0109. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: [Stacy.Schumann@nrc.gov](mailto:Stacy.Schumann@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN-7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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

**FOR FURTHER INFORMATION CONTACT:**

Rhonda Butler, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–8025, email: *Rhonda.Butler@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Obtaining Information and Submitting Comments**

*A. Obtaining Information*

Please refer to Docket ID NRC–2021–0109, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2021–0109.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *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. (EST), Monday through Friday, except Federal holidays.

*B. Submitting Comments*

The NRC encourages electronic comment submission through the Federal Rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2021–0109, facility name, unit number(s), docket

number(s), application date, and subject, in your comment submission.

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

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

**II. Background**

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves NSHC, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes a notice of an amendment containing SUNSI and SGI.

**III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The Commission has made a proposed determination that the following amendment request involves NSHC. Under the Commission’s regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this

proposed determination for the amendment request is shown as follows.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

*A. Opportunity To Request a Hearing and Petition for Leave To Intervene*

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to this action. Petitions shall be filed in accordance with the Commission’s “Agency Rules of Practice and Procedure” in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC’s regulations are accessible electronically from the NRC Library on the NRC’s website at <https://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner’s right to be made a party to the proceeding; (3) the nature and extent of the petitioner’s

property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions that the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of NSHC, the Commission will make a final determination on the issue of NSHC. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves NSHC, the

Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a petition is submitted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

#### *B. Electronic Submissions (E-Filing)*

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated

agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as discussed below, is granted. Detailed guidance on electronic submissions is located in the Guidance for Electronic Submissions to the NRC (ADAMS Accession No. ML13031A056) and on the NRC website at <https://www.nrc.gov/site-help/e-submittals.html>.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system timestamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the

filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>, by email to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting

documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the presiding

officer. If you do not have an NRC-issued digital ID certificate as described above, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

#### HOLTEC PILGRIM, LLC AND HOLTEC DECOMMISSIONING INTERNATIONAL; PILGRIM NUCLEAR POWER STATION; PLYMOUTH COUNTY, MA

Docket No(s) .....	50-293.
Application Date .....	March 17, 2021.
ADAMS Accession No. ....	ML21085A596.
Location in Application of NSHC .....	Pages 3–6 of Attachment 1.
Brief Description of Amendment(s) .....	The proposed license amendment requests NRC approval of the Pilgrim Independent Spent Fuel Storage Installation-Only Security, Training and Qualification, and Safeguards Contingency Plan, Revision 0 (ISFSI-0 PSP). The proposed plan would supersede the currently approved Physical Security, Training & Qualification, and Safeguards Contingency Plan and addresses the protection of material on site that is licensed by the Pilgrim license that includes the Independent Spent Fuel Storage Installation (ISFSI), as well as other special nuclear material on site, with the exception of material subject to the requirements of 10 CFR Part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radiation Material." The site configuration that is reflected in the plan assumes that all remaining spent fuel in the spent fuel pool has been removed to the ISFSI (ISFSI Only status). NSHC. Erin Connolly, Corporate Counsel—Legal, Holtec International, Krishna P. Singh Technology Campus, 1 Holtec Blvd., Camden, NJ 08104. Amy Snyder, 301-415-6822.
Proposed Determination .....	
Name of Attorney for Licensee, Mailing Address .....	
NRC Project Manager, Telephone Number .....	

#### Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including SUNSI and SGI). Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. Nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI or SGI is necessary to respond to this notice may request access to SUNSI or SGI. A "potential party" is any

person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI or SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI, SGI, or both to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Hearings and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices

is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are [Hearing.Docket@nrc.gov](mailto:Hearing.Docket@nrc.gov) and [RidsOgcMailCenter.Resource@nrc.gov](mailto:RidsOgcMailCenter.Resource@nrc.gov), respectively.<sup>1</sup> The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest

<sup>1</sup> While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

that could be harmed by the action identified in C.(1);

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention; and

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's "need to know" the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of "need to know" as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding;<sup>2</sup> and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF-85, "Questionnaire for Non-Sensitive Positions," for each individual who would have access to SGI. The completed Form SF-85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart C, and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF-85 can only be submitted electronically through the Electronic Questionnaires for Investigations Processing website, a secure website that is owned and

<sup>2</sup> Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, NRC staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already admitted contention or non-adjudicatory access to SGI.

operated by the Defense Counterintelligence and Security Agency (DCSA). To obtain online access to the form, the requestor should contact the NRC's Office of Administration at 301-415-3710.<sup>3</sup>

(c) A completed Form FD-258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD-258 will be provided in the background check request package supplied by the Office of Administration for each individual for whom a background check is being requested. The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, subpart C, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an Federal Bureau of Investigation identification and criminal history records check.

(d) A check or money order payable in the amount of \$326.00<sup>4</sup> to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted.

(e) If the requestor or any individual(s) who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF-85 or Form FD-258; however, all other requirements for access to SGI, including the need to know, are still applicable.

*Note:* Copies of documents and materials required by paragraphs C.(4)(b), (c), and (d) of this Order must be sent to the following address: U.S. Nuclear Regulatory Commission, Office of Administration, ATTN: Personnel

<sup>3</sup> The requestor will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requestor usually should be able to obtain access to the online form within one business day.

<sup>4</sup> This fee is subject to change pursuant to the DCSA's adjustable billing rates.

Security Branch, Mail Stop TWFN-07D04M, 11555 Rockville Pike, Rockville, MD 20852.

These documents and materials should *not* be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraphs C.(3) or C.(4), as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or need to know the SGI requested.

F. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both E.(1) and E.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.<sup>5</sup>

G. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both E.(1) and E.(2), the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be

<sup>5</sup> Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

provided. Those conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order<sup>6</sup> by each individual who will be granted access to SGI.

H. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22.

Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

I. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

#### J. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes a final adverse determination regarding the trustworthiness and reliability of the proposed recipient(s) for access to SGI,

the Office of Administration, in accordance with 10 CFR 2.336(f)(1)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requestor may challenge the Office of Administration's final adverse determination with respect to trustworthiness and reliability for access to SGI by filing a request for review in accordance with 10 CFR 2.336(f)(1)(iv).

(5) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

K. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding

officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.<sup>7</sup>

L. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

*It is so ordered.*

Dated: May 24, 2021.

For the Nuclear Regulatory Commission.

**Richard J. Laufer,**

*Acting Secretary of the Commission.*

#### ATTACHMENT 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information in This Proceeding

Day	Event/activity
0 .....	Publication of <b>Federal Register</b> notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10 .....	Deadline for submitting requests for access to Sensitive Unclassified Non Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60 .....	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).

<sup>6</sup> Any motion for Protective Order or draft Non-Disclosure Agreement or Affidavit for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the

deadline for the receipt of the written access request.

<sup>7</sup> Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR

46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI request submitted to the NRC staff under these procedures.

Day	Event/activity
20 .....	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25 .....	If NRC staff finds no "need," no "need to know," or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30 .....	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40 .....	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190 .....	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes a final adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205 .....	Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination under 10 CFR 2.336(f)(1)(iv).
A .....	If access granted: Issuance of a decision by a presiding officer or other designated officer on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3 .....	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28 .....	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53 .....	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60 .....	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60 .....	Decision on contention admission.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92015; File No. SR-CboeBZX-2021-041]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Define the Terms "Derivative Security" and "UTP Derivative Security" and Amend Certain Related Rules

May 25, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 19, 2021, Cboe BZX Exchange, Inc. ("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<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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") is filing with the Securities and Exchange Commission ("Commission") a proposed amendment to define the terms "Derivative Security" and "UTP Derivative Security" in Exchange Rule 1.5. Additionally, the Exchange proposes to make certain amendments to Rules 3.21 and 14.11 to both simplify and clarify the Exchange's rules as they pertain to UTP Derivative Securities. 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, 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.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

As part of this proposal, the Exchange proposes to (1) adopt a new definition for Derivative Security under proposed Rule 1.5(dd); (2) move the definition of unlisted trading privileges (“UTP”) Derivative Security<sup>5</sup> from Rule 14.11(j) to Exchange Rule 1.5(ee); and (3) amend Exchange Rule 14.11(j) applicable to UTP Derivative Securities. The Exchange also proposes to make ministerial changes to update numbering, lettering, Rule references, and provide clarifying text to Rules 1.5, 3.21, and 14.11. As discussed in further detail below, all of the proposed substantive changes are substantially similar to other exchange rules.

**(1) Proposal To Define Derivative Security in Exchange Rule 1.5(dd) and UTP Derivative Security in Exchange Rule 1.5(ee)**

The Exchange proposes to define “Derivative Security” in proposed Rule 1.5(dd) and amend existing Rule 1.5(ee) to include the definition of “UTP Derivative Security”. “Derivative Security” would be a new definition and would mean a security that meets the definition of “new derivative securities product” in Rule 19b-4(e) under the Act. “UTP Derivative Security” would refer to any one of a list of Derivative Securities that trades on the Exchange pursuant to unlisted trading privileges. The list of proposed Derivative Securities that may meet the definition of UTP Derivative Security are as follows: Equity Linked Notes; Index Fund Shares listed pursuant to Exchange Rule 14.11(c) or Nasdaq Stock Market LLC (“Nasdaq”) Rule 5705(b) and Investment Company Units listed pursuant to NYSE Arca, Inc. (“NYSE Arca”) Rule 5.2-E(j)(3); Index-Linked Exchangeable Notes; Equity Gold Shares; Equity Index-Linked Securities; Commodity-Linked Securities; Currency-Linked Securities; Fixed Income Index-Linked Securities; Futures-Linked Securities; Multifactor Index-Linked Securities; Trust Certificates; Currency and Index Warrants; Portfolio Depository Receipts; Trust Issued Receipts; Commodity-Based Trust Shares; Currency Trust Shares; Commodity Index Trust Shares; Commodity Futures Trust Shares; Partnership Units; Paired Trust Shares; Trust Units; Managed Fund Shares;

Managed Trust Securities; Managed Portfolio Shares; Tracking Fund Shares listed pursuant to Exchange Rule 14.11(m), Active Proxy Portfolio Shares listed pursuant to NYSE Arca Rule 8.601-E, and Proxy Portfolio Shares listed pursuant to Nasdaq Stock Market LLC Rule 5750; Selected Equity-linked Debt Securities (“SEEDS”); and Exchange-Traded Fund Shares.<sup>6</sup> The proposal is substantially similar to NYSE National, Inc. (“NYSE National”) Rule 1.1(m), but the list of Derivative Securities that may be UTP Derivative Securities includes two additional Derivative Securities, SEEDS and Exchange-Traded Fund Shares. While SEEDS and Exchange-Traded Fund Shares are not included in NYSE National Rule 1.1(m), they are Derivative Securities set forth not only in Exchange Rules 14.11(e)(12) and 14.11(l), respectively, but also in section 5700 of the Nasdaq Rules.

The Exchange also proposes to re-letter existing Rules 1.5(dd) through (ee) to allow for the addition of proposed Rule 1.5(dd). Further, the Exchange proposes to amend Rule 3.21 to reference the proposed definition of UTP Derivative Securities in Rule 1.5(ee).

**(2) Proposal To Amend the Exchange's Rule Applicable to UTP Derivative Securities**

First, the Exchange proposes to rename Rule 14.11(j) to “UTP Derivative Securities” so that it is consistent with the proposed definition set forth in Rule 1.5(ee). The Exchange also proposes to amend the preamble to Rule 14.11(j) to refer to the defined term UTP Derivative Security, as proposed in Exchange Rule 1.5(ee).

The Exchange also proposes to eliminate existing Rule 14.11(j)(1), which provides that the Exchange shall file with the Commission a Form 19b-4(e) with respect to each UTP Derivative Security. The Exchange believes that it should not be necessary to file a Form 19b-4(e) with the Commission if it begins trading a UTP Derivative Security because Rule 19b-4(e) under the Act refers to the “listing and trading” of a “new derivative securities product”. The Exchange believes that the requirements of Rule 19b-4(e) refer to when an exchange lists and trades a Derivative Security, and not when an exchange seeks only to trade such product on a UTP basis pursuant to Rule 12f-2 under the Act.<sup>7</sup> The proposal is

<sup>6</sup> For inclusiveness, all Derivative Securities that are subject to unlisted trading privileges have been identified in the list of proposed UTP Derivative Securities.

<sup>7</sup> 17 CFR 240.12f-2.

substantially identical to rule amendments made by other exchanges.<sup>8</sup>

The Exchange proposes to amend proposed Rule 14.11(j)(1) to replace the term “new derivative securities product” with the defined term “Derivative Security” as provided in proposed Rule 1.5(dd). Additionally, the Exchange proposes to clarify that the Early Trading Session is from 7:00 a.m. to 8:00 a.m. Eastern Time in order to consistently reference the relevant time zone throughout the paragraph.

The Exchange also proposes to add additional explanatory language to paragraph (j)(3) that states nothing in the Rule will limit the power of the Exchange under the Rules or procedures of the Exchange with respect to the Exchange's ability to suspend trading in any securities if such suspension is necessary for the protection of investors or in the public interest. The proposed text is identical to that included in NYSE National Rule 5.1(a)(2)(C). Further, the proposed text reinforces existing Exchange Rule 11.18(d).

Lastly, based on the proposal to eliminate Rule 14.11(j)(1), the Exchange proposes to renumber existing paragraphs (j)(2) through (j)(6) accordingly.

**2. Statutory Basis**

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> 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)<sup>10</sup> requirement that the rules of an exchange not be designed

<sup>8</sup> See Securities Exchange Act No. 83289 (May 17, 2018) 83 FR 23968 (May 23, 2018) (SR-NYSENAT-2018-02). See also Securities Exchange Act No. 84546 (November 7, 2018) 83 FR 56888 (November 14, 2018) (SR-BX-2018-051).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> *Id.*

<sup>5</sup> See Rule 14.11(j) and proposed amendments to Rule 1.5(ee).

to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed definitions of Derivative Security and UTP Derivative Security are reasonable as the proposed substantive changes are substantially similar to other exchanges' rules. Specifically, the proposed definition of Derivative Security in Rule 1.5(dd) is substantially similar to the definition of Exchange Traded Product provided for in NYSE National Rule 1.1(m), except that it better conforms to the defined term "new derivative securities product" of Rule 19b-4(e) under the Act. The proposed definition of UTP Derivative Securities is substantially similar to UTP Exchange Traded Product provided under NYSE National Rule 1.1(m), but includes two additional Derivative Securities, SEEDS and Exchange-Traded Fund Shares. While SEEDS and Exchange-Traded Fund Shares are not included in NYSE National Rule 1.1(m), they are Derivative Securities set forth not only in Exchange Rules 14.11(e)(12) and 14.11(l), respectively, but also in section 5700 of the Nasdaq Rules.

Eliminating the requirement to file a Form 19b-4(e) for each Derivative Security is consistent with the Act because the regulatory requirement was not intended to apply in the context of Derivative Securities trading on a UTP basis. Moreover, the proposal to eliminate Rule 14.11(j)(1) will provide for a more efficient process for adding Derivative Securities to trading on the Exchange on a UTP basis. The Exchange also notes that the proposal is substantially identical to other exchange rules.<sup>11</sup>

The Exchange believes that its proposal to amend the preamble to Rule 14.11(j) to correspond to Rule 1.5(ee) and the proposed defined term UTP Derivative Security will add clarity to the Exchange's Rules. Further, the Exchange believes that its proposal to amend the preamble to Rule 14.11(j)(1) to reference the proposed term UTP Derivative Security rather than "new derivative securities product" will conform the Rule to proposed Rule 1.5(dd) and will add clarity to the Exchange's Rules. Additionally, the proposal to add "Eastern Time" to the description of the Early Trading Session in proposed Rule 14.11(j)(1) will consistently reference the applicable time zone throughout the paragraph.

The proposed amendment to proposed Rule 14.11(j)(3) is identical to a sentence provided in NYSE National Rule 5.1(a)(2)(C) (trading halts).

Furthermore, the proposal reinforces existing Exchange Rule 11.18(d). Lastly, the Exchange's proposal to renumber existing paragraphs 14.11(j)(2)–(j)(6) based on its proposal to eliminate Rule 14.11(j)(1) will clarify and simplify the Exchange's Rules.

The Exchange believes that its proposal to amend Rule 3.21 to reference the proposed definition of UTP Derivative Securities in Rule 1.5(ee) will add clarity to the Exchange's Rules.

In light of the above proposals, the Exchange has also proposed to renumber and re-letter certain paragraphs or subparagraphs of Rules 1.5 and 14.11 and update applicable rule references.

The proposal is intended to simplify and clarify the Exchange's Rules as it relates to UTP Derivative Securities, which the Exchange believes will remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that renumbering and re-lettering current Rules to correspond to the proposed changes will allow the Exchange to maintain a clear and organized rule structure, thus preventing investor confusion. For these reasons, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather to harmonize certain Exchange Rules with those of other exchanges which will simplify and clarify the Exchange's Rules. The Exchange further believes that the proposed rule change would promote transparency on the Exchange, thus making the Exchange's rules easier to navigate.

#### *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<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>15</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. Waiver of the operative delay would allow certain of the Exchange's rules to conform to equivalent rules on other exchanges, as discussed herein, and to make clarifying and technical changes. The Commission therefore believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>16</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) under the Act 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.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</sup> 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).

<sup>11</sup> See *supra* note 8.

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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2021-041 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-2021-041. 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-CboeBZX-2021-041 and should be submitted on or before June 23, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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<sup>17</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-92016; File No. SR-NYSEArca-2021-40]**

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges**

May 25, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on May 11, 2021, NYSE Arca, Inc. ("NYSE Arca" 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 the NYSE Arca Equities Fees and Charges ("Fee Schedule") to adopt reduced fees for Retail Orders that are executed in the Exchange's opening and closing auctions. The Exchange proposes to implement the fee changes effective May 11, 2021. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://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 Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The Exchange proposes to amend the Fee Schedule to adopt reduced fees for Retail Orders<sup>4</sup> that are executed in the Exchange's opening and closing auctions.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct Retail Orders by offering further incentives for ETP Holders<sup>5</sup> to send such orders to the Exchange.

The Exchange proposes to implement the fee changes effective May 11, 2021.<sup>6</sup>

**Background**

As noted above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>7</sup>

While Regulation NMS has enhanced competition, it has also fostered a "fragmented" market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that "such competition can lead to the fragmentation of order flow in that stock."<sup>8</sup> Indeed, equity trading is

<sup>1</sup> A Retail Order is an agency order that originates from a natural person and is submitted to the Exchange by an ETP Holder, provided that no change is made to the terms of the order to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Securities Exchange Act Release No. 67540 (July 30, 2012), 77 FR 46539 (August 3, 2012) (SR-NYSEArca-2012-77).

<sup>2</sup> All references to ETP Holders in connection with this proposed fee change include Market Makers.

<sup>3</sup> The Exchange originally filed to amend the Fee Schedule on May 3, 2021 (SR-NYSEArca-2021-36). SR-NYSEArca-2021-36 was subsequently withdrawn and replaced by this filing.

<sup>4</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) ("Regulation NMS").

<sup>5</sup> See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

currently dispersed across 16 exchanges,<sup>9</sup> numerous alternative trading systems,<sup>10</sup> and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 17% market share.<sup>11</sup> Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 10% market share of executed volume of equities trading.<sup>12</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. The competition for Retail Orders is even more stark, particularly as it relates to exchange versus off-exchange venues.

The Exchange thus needs to compete in the first instance with non-exchange venues for Retail Order flow, and with the 16 other exchange venues for that Retail Order flow that is not directed off-exchange. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits, particularly as they relate to competing for Retail Order flow, because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

#### Proposed Rule Change

In response to this competitive environment, the Exchange proposes to adopt reduced fees for Retail Orders that are executed in the Exchange's opening and closing auctions. Specifically, under the Basic rates section of the Fee Schedule, the Exchange currently charges a fee of \$0.0015 per share for Market and Auction-Only Orders in

Tape A, Tape B and Tape C securities executed in an Early Opening Auction, Core Open Auction or Trading Halt Auction with a cap of \$20,000 per Equity Trading Permit ID. This fee also applies to Retail Orders that are executed in such auctions. To attract additional Retail Orders for execution in the Exchange's opening auctions, the Exchange proposes to adopt a lower fee of \$0.0005 per share for Market and Auction-Only Orders in Tape A, Tape B and Tape C securities that are designated as Retail Orders and executed in the Early Open Auction, Core Open Auction or Trading Halt Auction.

Further, under the Basic rates section of the Fee Schedule, the Exchange currently charges a fee of \$0.0012 per share for Market, Market-On-Close, Limit-On-Close, and Auction-Only Orders in Tape A, Tape B and Tape C securities executed in the Closing Auction. This fee also applies to Retail Orders executed in the Closing Auction. To attract additional Retail Orders for execution on the Exchange, the Exchange proposes to adopt a lower fee of \$0.0008 per share for Market, Market-On-Close, Limit-On-Close, and Auction-Only Orders in Tape A, Tape B and Tape C securities that are designated as Retail Orders and executed in the Closing Auction.

The Exchange is not proposing any change to the cap for Market and Auction-Only Orders executed in an Early Open Auction, Core Open Auction or Trading Halt Auction, which would remain at \$20,000 per Equity Trading Permit ID.

The purpose of the proposed rule change is to encourage even greater participation from ETP Holders and promote additional liquidity in Retail Orders. As described above, ETP Holders have a choice of where to send such orders. The Exchange believes that the proposed lower fees could lead to more ETP Holders choosing to route their Retail Orders to the Exchange for execution in the opening and closing auctions rather than to a competing exchange.

The Exchange does not know how much Retail Order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holders sending more of their Retail Orders to the Exchange. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity but additional Retail Orders

would benefit all market participants because it would provide greater execution opportunities in the Exchange's opening and closing auctions.

The proposed rule change is designed to be available to all ETP Holders on the Exchange and is intended to provide ETP Holders a greater incentive to direct more of their Retail Orders for execution in the Exchange's opening and closing auctions.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>14</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

#### The Proposed Fee Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>15</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to [sic] reduce use of certain categories of products, in response to fee changes. With respect to Retail Orders, ETP Holders can choose from any one of the 16 currently operating registered exchanges, and numerous off-exchange venues, to route such order flow. Accordingly, competitive forces

<sup>9</sup> See Cboe U.S. Equities Market Volume Summary, available at [https://markets.cboe.com/us/equities/market\\_share](https://markets.cboe.com/us/equities/market_share). See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

<sup>10</sup> See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atslist.htm>.

<sup>11</sup> See Cboe Global Markets U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/).

<sup>12</sup> See *id.*

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>15</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

reasonably constrain exchange transaction fees that relate to Retail Orders on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional Retail Orders to the Exchange.

The Exchange believes that the proposed change to adopt lower fees for Retail Orders executed in the Exchange's opening and closing auctions is reasonable because the lower fees would encourage ETP Holders to send a greater number of their Retail Orders for execution on the Exchange. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting Retail Order flow. The Exchange believes it is reasonable to offer reduced fees for Retail Orders in the opening and closing auctions. The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of Retail Orders transacted on the Exchange by ETP Holders which would benefit all market participants by offering greater price discovery and an increased opportunity to trade on the Exchange.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors.

#### The Proposed Fee Change Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal is an equitable allocation of its fees among its market participants because all ETP Holders that participate on the Exchange may qualify for the proposed reduced fee if they elect to send their Retail Orders for execution in the Exchange's opening and closing auctions. Without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder sending more of their Retail Orders to the Exchange. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity but additional Retail Orders would benefit all market participants because it would provide greater execution opportunities in the Exchange's opening and closing auctions. The Exchange anticipates that multiple ETP Holders that engage in retail trading activity would endeavor to

send more of their Retail Orders for execution in the Exchange's opening and closing auctions and pay the proposed lower fee.

Further, given the competitive market for attracting Retail Order flow, the Exchange notes that with this proposed rule change, the Exchange's pricing for Retail Orders that are executed in the opening and closing auctions would be lower than fees charged by other exchanges that the Exchange competes with for order flow. For example, the Nasdaq Stock Market LLC ("Nasdaq") charges its members a fee of \$0.0015 per share per share for orders, including Retail Orders, that are executed in the Nasdaq Opening Cross, and a fee that ranges between \$0.0008 per share and \$0.0016 per share for orders, including Retail Orders, that are executed in the Nasdaq Closing Cross.<sup>16</sup>

The Exchange further believes that the proposed change is equitable because it is reasonably related to the value to the Exchange's market quality associated with higher volume in Retail Orders. The Exchange believes that recalibrating the fees charged for execution of Retail Orders will continue to attract order flow and liquidity to the Exchange, thereby contributing to price discovery on the Exchange and benefiting investors generally.

The Exchange believes that the proposed rule change is equitable because maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

#### The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The Exchange believes that the proposed change is not unfairly discriminatory because it would apply to all ETP Holders on an equal and non-discriminatory basis. The Exchange

believes that the proposed rule change is not unfairly discriminatory because maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. This aspect of the proposed rule change also is consistent with the Act because all similarly situated ETP Holders would pay the same fee for Retail Orders executed in the Exchange's opening and closing auctions. Lastly, the submission of Retail Orders is optional for ETP Holders in that they could choose whether to submit Retail Orders and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>17</sup> 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. Instead, as discussed above, the Exchange believes that the proposed fee change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."<sup>18</sup>

*Intramarket Competition.* The Exchange believes the proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in

<sup>16</sup> See Nasdaq Price List, NASDAQ Crossing Network, at <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

<sup>17</sup> 15 U.S.C. 78f(b)(8).

<sup>18</sup> See Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

furtherance of the purposes of the Act. The proposed changes are designed to attract additional Retail Orders to the Exchange, in particular for execution in the Exchange's opening and closing auctions. The Exchange believes that the proposed lower fee would incentivize market participants to direct their Retail Orders to the Exchange. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage ETP Holders to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (*i.e.*, excluding auctions) is currently less than 10%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

*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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>19</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>20</sup> thereunder, because it establishes a due,

fee, or other charge imposed by the Exchange.

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)<sup>21</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2021-40 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2021-40. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of

10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2021-40, and should be submitted on or before June 22, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-11409 Filed 5-28-21; 8:45 am]  
**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**Sunshine Act Meetings**

**TIME AND DATE:** 3:15 p.m. on Thursday, June 3, 2021.

**PLACE:** The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(2).

<sup>21</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

Institution and settlement of administrative proceedings; Resolution of litigation claims; and Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

**CONTACT PERSON FOR MORE INFORMATION:**

For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: May 27, 2021.

**Vanessa A. Countryman,**  
Secretary.

[FR Doc. 2021-11598 Filed 5-27-21; 4:15 pm]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release Nos. 33-10944, 34-92018; File No. 265-28]

**Investor Advisory Committee Meeting**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Securities and Exchange Commission Investor Advisory Committee, established pursuant to Section 911 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, is providing notice that it will hold a public meeting. The public is invited to submit written statements to the Committee.

**DATES:** The meeting will be held on Thursday, June 10, 2021 from 10:00 a.m. until 4:15 p.m. (ET). Written statements should be received on or before June 9, 2021.

**ADDRESSES:** The meeting will be conducted by remote means and/or at the Commission's headquarters, 100 F St. NE, Washington, DC 20549. The meeting will be webcast on the Commission's website at [www.sec.gov](http://www.sec.gov). Written statements may be submitted by any of the following methods:

*Electronic Statements*

- Use the Commission's internet submission form (<http://www.sec.gov/rules/other.shtml>); or
- Send an email message to [rules-comments@sec.gov](mailto:rules-comments@sec.gov). Please include File No. 265-28 on the subject line; or

*Paper Statements*

- Send paper statements to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File No. 265-28. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method.

Statements also will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1503, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements 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.

**FOR FURTHER INFORMATION CONTACT:**

Marc Oorloff Sharma, Chief Counsel, Office of the Investor Advocate, at (202) 551-3302, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public, except during that portion of the meeting reserved for an administrative work session during lunch. Persons needing special accommodations to take part because of a disability should notify the contact person listed in the section above entitled **FOR FURTHER INFORMATION CONTACT**.

*The agenda for the meeting includes:* Welcome remarks; approval of previous meeting minutes; a panel discussion regarding best execution and its role in post-NMS market structure; a panel discussion regarding best execution issues unique to wholesale brokers; a panel discussion regarding 10b5-1 plans; a discussion of a recommendation regarding individual retirement accounts; subcommittee reports; and a non-public administrative session.

Dated: May 26, 2021.

**Vanessa A. Countryman,**  
Secretary.

[FR Doc. 2021-11479 Filed 5-28-21; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-92013; File No. SR-CboeBZX-2021-040]

**Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule**

May 25, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 12, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Cboe BZX Exchange, Inc. (the "Exchange" or "BZX" or "BZX Equities") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend its fee schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://markets.cboe.com/us/equities/regulation/rule Filings/bzx/>), 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.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The Exchange proposes to amend its fee schedule to eliminate the standard rebate for liquidity adding orders in securities priced below \$1.00.<sup>3</sup>

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,<sup>4</sup> no single registered equities exchange has more than 15% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a "Maker-Taker" model whereby it pays credits to Members that add liquidity and assesses fees to those that remove liquidity. The Exchange's fee schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively.

For liquidity adding orders (i.e., yielding fee code B,<sup>5</sup> V,<sup>6</sup> and Y<sup>7</sup>), the Exchange provides a standard rebate of \$0.0018 per share for orders in securities priced at or above \$1.00, and a standard rebate of \$0.0009 per share for orders in securities priced below \$1.00. For liquidity removing orders (i.e., yielding fee code N,<sup>8</sup> W,<sup>9</sup> and BB<sup>10</sup>), the Exchange assesses a fee of \$0.0030 per share for orders in

securities at or above \$1.00, and assesses a fee of 0.30% of the total dollar value for orders in securities priced below \$1.00. The Exchange now proposes to eliminate the standard rebate applied to orders in securities priced below \$1.00 and provide that such executions shall be free as the Exchange no longer wishes to, nor is it required to, provide such a rebate.

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),<sup>12</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes that the proposed eliminating the rebate and providing free executions for liquidity adding orders in securities priced below \$1.00 is reasonable because the Exchange no longer wishes to, nor is it required to, provide such a rebate. The Exchange believes the proposal is equitable and not unfairly discriminatory because Members still are not paying any fees for such executions. Further, the Exchange believes the proposal is equitable and not unfairly discriminatory because it applies equally to all Members. With the proposed amendments, the Exchange's make-take fee structure would continue to incentivize liquidity providers to continue to provide liquidity since such orders remain eligible for better pricing than orders that remove liquidity and are charged a fee. Further, the Exchange believes liquidity in securities priced less than \$1.00 is sufficient without a rebate.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or

intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposal would apply uniformly to all Members, and Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. Excessive fees would serve to impair an exchange's ability to compete for order flow and Members rather than burdening competition. Moreover, Members still would not be assessed fees for liquidity adding orders, which is designed to incentivize liquidity, which the Exchange believes will benefit all market participants by encouraging a transparent and competitive market. The Exchange believes liquidity in securities priced less than \$1.00 is sufficient without a rebate.

As previously discussed, the Exchange operates in a highly competitive market. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 15% of the market share.<sup>13</sup> Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to

<sup>3</sup> The Exchange initially filed the proposed fee changes May 3, 2021 (SRCboeBZX-2021-037). On May 12, 2021, the Exchange withdrew that filing and submitted this proposal.

<sup>4</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (April 26, 2021), available at [https://markets.cboe.com/us/equities/market\\_statistics/](https://markets.cboe.com/us/equities/market_statistics/).

<sup>5</sup> Fee code B is appended to displayed orders adding liquidity to BZX (Tape B).

<sup>6</sup> Fee code V is appended to displayed orders adding liquidity to BZX (Tape A).

<sup>7</sup> Fee code Y is appended to displayed orders adding liquidity to BZX (Tape C).

<sup>8</sup> Fee code N is appended to orders removing liquidity from BZX (Tape C).

<sup>9</sup> Fee code W is appended to orders removing liquidity from BZX (Tape A).

<sup>10</sup> Fee code BB is appended to orders removing liquidity from BZX (Tape B).

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>13</sup> *Supra* note 3.

investors and listed companies.”<sup>14</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . . .”<sup>15</sup> Accordingly, the Exchange does not believe its proposed fee changes imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and paragraph (f) of Rule 19b-4<sup>17</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

<sup>14</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>15</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f).

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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2021-040 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-2021-040. 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-2021-040 and should be submitted on or before June 22, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-11406 Filed 5-28-21; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>18</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-92000; File No. SR-BX-2021-024]**

**Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118**

May 25, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 19, 2021, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend: (i) The Exchange’s transaction credits, at Equity 7, Section 118(a), as described further below.

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 operates on the “taker-maker” model, whereby it generally pays credits to members that take

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, Section 118(a), which consists of several different credits that it provides for orders in securities priced at \$1 or more per share that access liquidity on the Exchange and several different charges that it assesses for orders in such securities that add liquidity on the Exchange.

The Exchange proposes to add a new credit to this schedule of \$0.0018 per share executed for orders in securities in Tape B that access liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that: (i) Accesses at least 60% more liquidity in securities in Tape B, as a percentage of total Consolidated Volume during a month, than it did during April 2021; (ii) accesses liquidity in securities in Tape B equal to or exceeding 0.035% of total Consolidated Volume during a month; and (iii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. Orders in securities in Tapes A and C will not be eligible for the new proposed credit.

The Exchange intends for this new credit to reward members that remove significant volumes of Tape B liquidity from the Exchange and to encourage such members to further grow the extent to which they remove Tape B liquidity from the Exchange. The Exchange believes that any ensuing increase in the removal of Tape B liquidity from the Exchange will improve the quality of the Exchange's market. In particular, the Exchange intends to encourage members to increase the extent to which they remove liquidity in securities in Tape B, as the Exchange believes that increased removal activity in securities in Tape B is most needed and likely to be most beneficial to market quality.

The Exchange also notes that, like its other removal credit tiers, it proposes to tie the new proposed credit to the addition of at least an average daily volume of 50,000 shares of liquidity during the month. Doing so will help to incent members, not only to remove a significant amount of liquidity from the Exchange, but also to add a significant amount of liquidity as well. Any increase in liquidity adding activity that ensues from this credit will improve market quality, to the benefit of all participants.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

of the Act,<sup>3</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>4</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

## The Proposal Is Reasonable

The Exchange's proposed change to its schedule of credits is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . . .”<sup>5</sup>

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>6</sup>

Numerous indicia demonstrate the competitive nature of this market. For

example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges.

Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.<sup>7</sup>

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.<sup>8</sup> Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that its proposal is reasonable to establish a new remove credit with a growth component tied to the removal of liquidity in securities in Tape B. The proposal will encourage members to increase the extent to which they remove Tape B liquidity from the Exchange, and it will reward members that do so in significant volumes. The Exchange believes that any ensuing increase in the removal of liquidity from the Exchange—and in particular, liquidity in securities in Tape B—will improve the quality of the Exchange's market, and it will cause the Exchange to become more attractive to existing and prospective participants. The Exchange notes that it selected April 2021 as the baseline for the growth requirements because it is the month immediately preceding the establishment of the new tier.

The Exchange also believes it is reasonable to tie the new proposed credit to the addition of at least an average daily volume of 50,000 shares of liquidity during the month. Doing so will help to incent members, not only to remove a significant amount of liquidity from the Exchange, but also to add a

<sup>3</sup> See CBOE BYX Fee Schedule, at [http://markets.cboe.com/us/equities/membership/fee\\_schedule/byx/](http://markets.cboe.com/us/equities/membership/fee_schedule/byx/); NYSE National Fee Schedule, at [https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE\\_National\\_Schedule\\_of\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf).

<sup>4</sup> The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it. In particular, the Exchange notes that these examples of shifts in liquidity and market share, along with many others, have occurred within the context of market participants' existing duties of Best Execution and obligations under the Order Protection Rule under Regulation NMS.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>5</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>6</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

significant amount of liquidity as well. Any increase in liquidity adding activity that ensues from this credit will improve market quality, to the benefit of all participants. The Exchange notes that it includes the same criteria in several of its existing remove credit tiers.

The Exchange notes that those participants that are dissatisfied with the proposed credit are free to shift their order flow to competing venues that offer them higher credits or lower charges.

#### The Proposal Is an Equitable Allocation of Credits and Charges

The Exchange believes that it is an equitable allocation of its credits to establish a new remove credit tier that is tied to the growth in removal of liquidity in securities in Tape B. The addition of this new proposed credit tier will encourage members to increase the extent to which they remove Tape B liquidity from the Exchange, and it will reward members that do so in significant volumes. The Exchange believes that any increase in the removal of liquidity from the Exchange that follows from the introduction of this new credit—and in particular, liquidity in securities in Tape B—will improve the quality of the Exchange's market, and it will cause the Exchange to become more attractive to existing and prospective participants.

The Exchange also believes it is an equitable allocation to tie the new proposed credit to the addition of at least an average daily volume of 50,000 shares of liquidity during the month. Doing so will help to incent members, not only to remove a significant amount of liquidity from the Exchange, but also to add a significant amount of liquidity as well. Any increase in liquidity adding activity that ensues from this credit will improve market quality, to the benefit of all participants. The Exchange notes that it includes the same criteria in several of its existing remove credit tiers.

Any participant that is dissatisfied with the proposal is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

#### The Proposed New Credit Is Not Unfairly Discriminatory

The Exchange believes that its new proposed remove credit with a growth component is not unfairly discriminatory because it is aimed at encouraging the growth in removal of liquidity from the Exchange, which if successful, stands to improve the quality of the Exchange's market, to the

benefit of all market participants. The Exchange notes that its proposal to offer the new credit to members with orders in securities in Tape B is fair because the Exchange observes that its market has a greater need for, and its market quality would benefit most from, growth in removal of liquidity in securities in Tape B. The Exchange has limited resources with which to apply to incentives, and it must allocate those limited resources in a manner that prioritizes areas of greatest need and potential effect.

Any participant that is dissatisfied with the proposal is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

#### *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.

#### Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. As noted above, all members of the Exchange will benefit from any increase in market activity that the proposal effectuates. Members may grow or modify their businesses so that they can receive the new proposed credit. Moreover, members are free to trade on other venues to the extent they believe that the credit proposed is not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

#### Intermarket Competition

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange

believes that the degree to which credit changes in this market may impose any burden on competition is extremely limited.

The proposed new credit is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume has less than 17% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 41% of industry volume for the month of March 2021.

In sum, if the change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

#### *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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>9</sup>

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2021-024 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-2021-024. 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-2021-024 and should be submitted on or before June 22, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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schedule of credits, at Equity 7, Section 118(a). Specifically, the Exchange proposes to (1) amend an existing credit of \$0.0030 per share executed for members that add at least a certain threshold volume of liquidity in securities in Tape B; (2) amend an existing credit of \$0.00295 per share executed for members that add at least a certain threshold volume of liquidity in securities in Tape C and in "Designated Retail Orders"<sup>3</sup> for securities in any Tape; (3) amend an existing credit of \$0.0027 per share for members that meet specified volume requirements on both Nasdaq and the Nasdaq Options Market ("NOM") when adding liquidity; and (4) amend an existing credit of \$0.0025 per share executed for orders that are routed using the "SCAR" routing option<sup>4</sup> and which ultimately execute on Nasdaq BX, Inc. ("BX").

**Amend Existing Credit for Adding Liquidity in Tape B Securities**

First, the Exchange proposes to amend an existing credit of \$0.0030 per share executed to a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.30% or more of Consolidated Volume<sup>5</sup> during the month, which includes shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE ("Tape B Securities") that represent 0.40% or more of Consolidated Volume.

The Exchange proposes to lower the liquidity adding threshold for the credit

<sup>3</sup> Pursuant to Equity 7, Section 118, a "Designated Retail Order" is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this section, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

<sup>4</sup> Pursuant to Equity 4, Section 4758(a)(1)(A)(xv), "SCAR" is a routing option under which orders will check the System for available shares and simultaneously route to BX and Nasdaq PSX in accordance with the System routing table. If shares remain unexecuted after routing, they are posted on the book or cancelled. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

<sup>5</sup> Equity 7, Section 118(a) defines "Consolidated Volume" to mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes is excluded from both total Consolidated Volume and the member's trading activity.

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-92012; File No. SR-NASDAQ-2021-043]

**Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Credits at Equity 7, Section 118(a)**

May 25, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 19, 2021, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Exchange's transaction credits at Equity 7, Section 118(a), as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/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 purpose of the proposed rule change is to amend the Exchange's

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

from 1.30% of Consolidated Volume to 1.25% of Consolidated Volume. In doing so, the Exchange intends to render the credit more readily accessible to members. If more members assess that this credit is accessible to them, and they increase their liquidity adding activity on the Exchange to qualify for it, then the quality of the market will improve, to the benefit of all participants.

**Amend Existing Credit for Adding Liquidity in Tape C Securities and in Designated Retail Orders**

Second, the Exchange proposes to amend a credit it presently offers of \$0.00295 per share executed to a member that, through one or more of its Nasdaq Market Center MPIDs (i) adds shares of liquidity during the month representing at least 0.80% of Consolidated Volume during the month; (ii) adds at least 0.35% of Consolidated Volume during the month in securities in Tape C; and (iii) adds at least 0.15% of Consolidated Volume during the month in Designated Retail Orders for securities in any Tape. The Exchange proposes to amend this credit in several ways.

The Exchange proposes to lower the liquidity adding threshold for the credit from 0.80% of Consolidated Volume to 0.65% of Consolidated Volume. In doing so, the Exchange intends to render the credit more readily accessible to members. If more members assess that this credit is accessible to them, and they increase their liquidity adding activity on the Exchange to qualify for it, then the quality of the market will improve, to the benefit of all participants.

The Exchange also proposes to add a new qualifying criterion to the credit that would require members to achieve at least a 60% ratio of its liquidity adding activity to its total activity on the Exchange during the month. The Exchange proposes to add this new criterion so that the credit rewards members whose activities on the Exchange consist primarily of adding liquidity. Again, the Exchange believes that all participants will benefit from an improvement in market quality to the extent that the Exchange successfully incentivizes liquidity adding activity.

Finally, the Exchange proposes to eliminate the qualifying criterion that members must add at least 0.35% of Consolidated Volume during the month in securities in Tape C. The Exchange proposes to eliminate this criterion because the Exchange believes it already has adequate incentives for members to add liquidity in Tape C securities, such that this criterion is not necessary.

Moreover, the Exchange seeks to avoid rendering this credit overly complex and onerous for members to attain.

**Amend Existing Credit for Adding Liquidity on Nasdaq and NOM**

Third, the Exchange proposes to amend an existing credit for securities in all three Tapes that it provides (other than Supplemental Orders or Designated Retail Orders) to members that meet a specified volume threshold on Nasdaq for orders that add liquidity, and that also meet a specified volume threshold on NOM when adding liquidity. The existing credit provides that a member will receive a credit of \$0.0027 per share executed if the member (1) adds liquidity through one or more of its Nasdaq Market Center MPIDs during the month that, in all securities, represents more than 0.10% of Consolidated Volume during the month, and (2) adds Customer,<sup>6</sup> Professional,<sup>7</sup> Firm,<sup>8</sup> Non-NOM Market Maker,<sup>9</sup> and/or Broker-Dealer<sup>10</sup> liquidity of 0.40% or more of total industry ADV in the customer clearing range for Equity and ETF option contracts per day during the month on the Nasdaq Options Market.

The Exchange proposes to amend this credit by deleting the requirement that members must add a threshold percentage of liquidity on NOM that is classified as “Customer, Professional, Firm, Non-NOM Market Maker, and/or Broker-Dealer” liquidity. By eliminating this requirement, the Exchange intends to render the credit easier for members to attain, as the addition of any type of liquidity in the customer clearing range on NOM would be acceptable. The Exchange believes that if more members find the credit to be attainable, then more will seek to qualify for it by adding liquidity to the Exchange and

<sup>6</sup> The term “Customer” applies to any transaction that is identified by a participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a “Professional,” as defined in Option 7, Section 1.

<sup>7</sup> A “Professional” is defined in Options 1, Section 1(a)(47) as “any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).”

<sup>8</sup> The term “Firm” or (“F”) applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

<sup>9</sup> The term “Non-NOM Market Maker” or (“O”) is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

<sup>10</sup> The term “Broker-Dealer” or (“B”) applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

NOM, which will improve the quality of both markets.

**Amend Existing Credit for Routed Orders Using SCAR That Execute on BX**

Finally, the Exchange proposes to lower from \$0.0025 to \$0.0016 per share executed the credit that it provides to a member that uses the SCAR order routing option and executes an order in a security in any of the three tapes on BX.

BX recently revised its pricing schedule to lower the amounts of the credits it provides to its members that remove liquidity from BX.<sup>11</sup> Currently, all of the credits that BX provides to its members are lower than \$0.0025 per share executed.<sup>12</sup> As a result, the Exchange proposes to lower its own \$0.0025 per share executed credit for SCAR routed orders that execute on BX in order to better align this credit with corresponding credits that BX provides to its own members.

**2. Statutory Basis**

The Exchange believes that its proposals are consistent with Section 6(b) of the Act,<sup>13</sup> in general, and further the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>14</sup> in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposals are also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

**The Proposals Are Reasonable**

The Exchange’s proposals are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing

<sup>11</sup> Securities Exchange Act Release No. 91639 (April 22, 2021), 80 FR 22500 (April 28, 2021).

<sup>12</sup> See BX Equity 7 (Pricing Schedule), available at <https://listingcenter.nasdaq.com/rulebook/bx/rules/BX%20Equity%207>.

<sup>13</sup> 15 U.S.C. 78ff(b).

<sup>14</sup> 15 U.S.C. 78ff(b)(4) and (5).

agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ." <sup>15</sup>

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies." <sup>16</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposals represent reasonable attempts by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that it is reasonable to modify the qualification criteria for two of its transaction credits, at Equity 7, Section 118(a) because they will each encourage the addition of liquidity to the Exchange, first by making it easier for additional members to qualify for the \$0.0030 and the \$0.00295 credit, and second by specifying that the \$0.00295 per share executed credit will go to those members whose activities on the Exchange consist primarily of adding liquidity to the Exchange. If more

members seek to qualify for these credits by adding liquidity to the Exchange, and if members seek to become net adders of liquidity on the Exchange to qualify or continue to qualify for the \$0.00295 credit, then the quality of the market will improve, and the Exchange will become more attractive to existing and prospective participants.

The Exchange also believes that it is reasonable for it to eliminate the requirement for the \$0.00295 credit that members must add at least 0.35% of Consolidated Volume during the month in securities in Tape C. The Exchange believes that this proposal is reasonable because it assesses that it already has adequate incentives for members to add liquidity in Tape C securities, such that this requirement is not necessary. Moreover, the Exchange seeks to avoid rendering this credit overly complex and onerous for members to attain.

Similarly, the Exchange believes that it is reasonable to ease the qualification criteria for the \$0.0027 per share executed credit for a member that adds certain threshold volumes of liquidity on the Exchange and on NOM during a month. By eliminating the existing requirement that a member must add liquidity to NOM that consists of Customer, Professional, Firm, Non-NOM Market Maker, and/or Broker-Dealer liquidity, the Exchange again intends to render the credit easier for members to attain. If as a result of the proposal, more members find the credit to be attainable and seek to qualify for it by adding liquidity to the Exchange and NOM, then the quality of both markets will improve, and the Exchange will become more attractive to existing and prospective participants.

Finally, the Exchange believes it is reasonable to lower the \$0.0025 per share executed credit that it provides to a member that enters a SCAR routed order that executes on BX because the proposal will better align this credit with corresponding credits that BX provides to its own members that remove liquidity from that exchange. The Exchange believes that it is appropriate to periodically reassess and recalibrate its credits. In this instance, aligning the credits will help to ensure that market participants do not use the Exchange's SCAR order routing strategy solely to obtain a higher rebate on orders that are routed and executed on BX.

The Exchange notes that those market participants that are dissatisfied with the proposals are free to shift their order flow to competing venues that offer more generous pricing or less stringent qualifying criteria.

**The Proposals Are Equitable Allocations of Credits**

The Exchange believes that is an equitable allocation to ease and otherwise modify the eligibility requirements for three of its transaction credits because the proposals will encourage members to add additional liquidity to the Exchange. To the extent that the Exchange succeeds in increasing liquidity on the Exchange, then the Exchange will experience improvements in its market quality, which again stands to benefit all market participants.

The Exchange believes its proposal to lower its credit for SCAR routed orders that execute on BX is an equitable allocation because the proposed amended credit amount is better aligned with liquidity removal credits that BX provides to its members.

Any participant that is dissatisfied with the proposals is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

**The Proposals Are Not Unfairly Discriminatory**

The Exchange believes that its proposals are not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange believes that its proposals to ease or otherwise amend the qualifying criteria for three of its transaction credits are not unfairly discriminatory because these credits are available to all members. Moreover, these proposals stand to improve the overall market quality of the Exchange, to the benefit of all market participants, by incentivizing members to increase the extent of their liquidity adding activity on the Exchange.

Meanwhile, the proposal to lower the amount of its credit for members that use SCAR and execute orders on BX is

<sup>15</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>16</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

not unfairly discriminatory because the proposed amended credit is available to all members and is in better alignment with the amounts of the credits that BX itself provides to members that remove liquidity from that exchange.

Any participant that is dissatisfied with the proposals is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*Intramarket Competition*

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage.

As noted above, the proposed changes to the qualifying criteria for three of its transaction credits are intended to have market-improving effects, to the benefit of all members. Any member may elect to achieve the levels of liquidity required in order to qualify for the credits.

Likewise, the Exchange's proposal to lower the amount of the credit it provides to members that utilize the SCAR routing strategy and execute orders on BX will not competitively disadvantage any category of Exchange member. The proposal will merely ensure that the amount of the credit is better aligned with the recently lowered corresponding credits that BX provides to its own members that remove liquidity from that exchange.

The Exchange notes that its members are free to trade on other venues to the extent they believe that the proposed qualification criteria for or amounts of these credits are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that its pricing tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

*Intermarket Competition*

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more

favorable. In such an environment, the Exchange must continually adjust its credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited.

The proposed amended credits are reflective of this competition because, even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprises upwards of 44% of industry volume.

The Exchange's proposals to amend three of its transaction credits are pro-competitive in that the Exchange intends for them to increase liquidity on the Exchange, thereby rendering the Exchange a more attractive and vibrant venue to market participants. Meanwhile, the Exchange's proposal to lower the credit it offers to members that use SCAR and execute orders on BX is pro-competitive in that the proposal will result in better competitive alignment between the SCAR credit and the amounts of liquidity removal credits that BX provides to its own members that remove liquidity from that exchange.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

*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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>17</sup>

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR-NASDAQ-2021-043 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2021-043. 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,

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2021-043 and should be submitted on or before June 22, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-11405 Filed 5-28-21; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91994; File No. SR-CboeBZX-2021-039]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

May 25, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 10, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to list and trade shares of the Wise

Origin Bitcoin Trust (the "Trust"),<sup>3</sup> under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

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/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), 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 list and trade the Shares under BZX Rule 14.11(e)(4),<sup>4</sup> which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.<sup>5</sup> FD Funds Management LLC is the sponsor of the Trust ("Sponsor"). The Shares will be registered with the Commission by means of the Trust's registration statement on Form S-1 (the "Registration Statement").<sup>6</sup>

<sup>3</sup> The Trust was formed as a Delaware statutory trust on March 17, 2021 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

<sup>4</sup> The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

<sup>5</sup> All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

<sup>6</sup> See draft Registration Statement on Form S-1, dated March 24, 2021 submitted to the Commission by the Sponsor on behalf of the Trust. The descriptions of the Trust, the Shares, and the Index (as defined below) contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

#### Background

Bitcoin is a digital asset based on the decentralized, open source protocol of the peer-to-peer computer network launched in 2009 that governs the creation, movement, and ownership of bitcoin and hosts the public ledger, or "blockchain," on which all bitcoin transactions are recorded (the "Bitcoin Network" or "Bitcoin"). The decentralized nature of the Bitcoin Network allows parties to transact directly with one another based on cryptographic proof instead of relying on a trusted third party. The protocol also lays out the rate of issuance of new bitcoin within the Bitcoin Network, a rate that is reduced by half approximately every four years with an eventual hard cap of 21 million. It is generally understood that the combination of these two features—a systemic hard cap of 21 million bitcoin and the ability to transact trustlessly with anyone connected to the Bitcoin Network—gives bitcoin its value.<sup>7</sup>

The first rule filing proposing to list an exchange-traded product to provide exposure to bitcoin in the U.S. was submitted by the Exchange on June 30, 2016.<sup>8</sup> At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market cap of all bitcoin in existence at that time was approximately \$10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.<sup>9</sup> Similarly, regulated U.S. bitcoin futures contracts did not exist. The Commodity Futures Trading Commission (the "CFTC") had determined that bitcoin is a commodity,<sup>10</sup> but had not engaged in

<sup>7</sup> For additional information about bitcoin and the Bitcoin Network, see <https://bitcoin.org/en/getting-started>; <https://www.fidelitydigitalassets.com/articles/addressing-bitcoin-criticisms>; and <https://www.vaneck.com/education/investment-ideas/investing-in-bitcoin-and-digital-assets/>.

<sup>8</sup> See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the "Winklevoss Order").

<sup>9</sup> Digital assets that are securities under U.S. law are referred to throughout this proposal as "digital asset securities." All other digital assets, including bitcoin, are referred to interchangeably as "cryptocurrencies" or "virtual currencies." The term "digital assets" refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

<sup>10</sup> See "In the Matter of Coinflip, Inc." ("Coinflip") (CFTC Docket 15-29 (September 17, 2018)).

Continued

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

significant enforcement actions in the space. The New York Department of Financial Services (“NYDFS”) adopted its final BitLicense regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.<sup>11</sup> While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only \$60 million in assets.<sup>12</sup> There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the Staff of the Commission noted in a letter to the Investment Company Institute and SIFMA that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.<sup>13</sup>

Fast forward to the first quarter of 2021 and the digital assets financial ecosystem, including bitcoin, has progressed significantly. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities<sup>14</sup> and shares in investment vehicles holding bitcoin futures.<sup>15</sup>

2015)) (order instituting proceedings pursuant to Sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated:

“Section 1(a)(9) of the CEA defines ‘commodity’ to include, among other things, ‘all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.’ 7 U.S.C. 1a(9). The definition of a ‘commodity’ is broad. *See, e.g., Board of Trade of City of Chicago v. SEC*, 677 F. 2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.”

<sup>11</sup> A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. *See https://www.dfs.ny.gov/apps\_and\_licensing/virtual\_currency\_businesses/\_regulated\_entities*.

<sup>12</sup> Data as of March 31, 2016 according to publicly available filings. *See* Bitcoin Investment Trust Form S-1, dated May 27, 2016, available: <https://www.sec.gov/Archives/edgar/data/1588489/00095012316017801/filename1.htm>.

<sup>13</sup> *See* letter from Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission to Paul Schott Stevens, President & CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group—Head, Securities Industry and Financial Markets Association (January 18, 2018), available at <https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm>.

<sup>14</sup> *See* Prospectus supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333-233363), available at: [https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1\\_inxlimited.htm](https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm).

<sup>15</sup> *See* Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG Bitcoin Strategy Fund Registration, available at: [https://www.sec.gov/xslFTA1X01/primary\\_.doc.xml](https://www.sec.gov/xslFTA1X01/primary_.doc.xml).

Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services. For example, in December 2020, the Commission adopted a conditional no-action position permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3-3 under the Exchange Act;<sup>16</sup> in September 2020, the Staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (“ATS”) for digital asset securities, subject to specified conditions;<sup>17</sup> in October 2019, the Staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology,<sup>18</sup> and multiple transfer agents who provide services for digital asset securities registered with the Commission.<sup>19</sup>

Outside the Commission’s purview, the regulatory landscape has changed significantly since 2016, and cryptocurrency markets have grown and evolved as well. The market for bitcoin is approximately 100 times larger, having recently reached a market cap of over \$1 trillion. As of February 27, 2021, bitcoin’s market cap is greater than companies such as Facebook, Inc., Berkshire Hathaway Inc., and JP Morgan Chase & Co. CFTC regulated bitcoin futures represented approximately \$28 billion in notional trading volume on Chicago Mercantile Exchange (“CME”) (“Bitcoin Futures”) in December 2020 compared to \$737 million, \$1.4 billion, and \$3.9 billion in total trading in

*Archives/edgar/data/1764894/000119312519309942/d693146d497.htm*

<sup>16</sup> *See* Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7-25-20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

<sup>17</sup> *See* letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), available at: <https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf>.

<sup>18</sup> *See* letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Cascarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), available at: <https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf>.

<sup>19</sup> *See, e.g.*, Form TA-1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, available at: [https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary\\_.doc.xml](https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_.doc.xml).

December 2017, December 2018, and December 2019, respectively. Bitcoin Futures traded over \$1.2 billion per day in December 2020 and represented \$1.6 billion in open interest compared to \$115 million in December 2019, which the Exchange believes represents a regulated market of significant size, as further discussed below.<sup>20</sup> The CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptocurrency trading.<sup>21</sup> The U.S. Office of the Comptroller of the Currency (the “OCC”) has made clear that federally-chartered banks are able to provide custody services for cryptocurrencies and other digital assets.<sup>22</sup> The OCC recently granted conditional approval of two charter conversions by state-chartered trust companies to national banks, both of which provide cryptocurrency custody services.<sup>23</sup> NYDFS has granted no fewer than twenty-five BitLicenses, including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services, including the Trust’s Custodian. The U.S. Treasury Financial Crimes Enforcement Network (“FinCEN”) has released extensive guidance regarding the applicability of the Bank Secrecy Act (“BSA”) and implementing regulations to virtual currency businesses,<sup>24</sup> and has proposed rules

<sup>20</sup> All statistics and charts included in this proposal are sourced from <https://www.cmegroup.com/trading/bitcoin-futures.html>.

<sup>21</sup> The CFTC’s annual report for Fiscal Year 2020 (which ended on September 30, 2020) noted that the CFTC “continued to aggressively prosecute misconduct involving digital assets that fit within the CEA’s definition of commodity” and “brought a record setting seven cases involving digital assets.” *See* CFTC FY2020 Division of Enforcement Annual Report, available at: [https://www.cftc.gov/media/5321/DOE\\_FY2020\\_AnnualReport\\_120120/download](https://www.cftc.gov/media/5321/DOE_FY2020_AnnualReport_120120/download). The CFTC also filed on October 1, 2020, a civil enforcement action against the owner/operators of the BitMEX trading platform, which was one of the largest bitcoin derivative exchanges. *See* CFTC Release No. 8270-20 (October 1, 2020) available at: <https://www.cftc.gov/PressRoom/PressReleases/8270-20>. The CFTC also ordered Coinbase Inc. to pay \$6.5 million for false, misleading, or inaccurate reporting and wash trading on March 19, 2021. *See* CFTC Release No. 8369-21 (March 19, 2021) available at: <https://cftc.gov/PressRoom/PressReleases/8369-21>.

<sup>22</sup> *See* OCC News Release 2021-2 (January 4, 2021) available at: <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-2.html>.

<sup>23</sup> *See* OCC News Release 2021-6 (January 13, 2021) available at: <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-6.html> and OCC News Release 2021-19 (February 5, 2021) available at: <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-19.html>.

<sup>24</sup> *See* FinCEN Guidance FIN-2019-G001 (May 9, 2019) (Application of FinCEN’s Regulations to

imposing requirements on entities subject to the BSA that are specific to the technological context of virtual currencies.<sup>25</sup> In addition, the Treasury's Office of Foreign Assets Control ("OFAC") has brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.<sup>26</sup>

In addition to the regulatory developments laid out above, more traditional financial market participants appear to be embracing cryptocurrency: Large insurance companies,<sup>27</sup> asset managers,<sup>28</sup> university endowments,<sup>29</sup> pension funds,<sup>30</sup> and even historically bitcoin skeptical fund managers<sup>31</sup> are

Certain Business Models Involving Convertible Virtual Currencies) available at: <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf>.

<sup>25</sup> See U.S. Department of the Treasury Press Release: "The Financial Crimes Enforcement Network Proposes Rule Aimed at Closing Anti-Money Laundering Regulatory Gaps for Certain Convertible Virtual Currency and Digital Asset Transactions" (December 18, 2020), available at: <https://home.treasury.gov/news/press-releases/sm1216>.

<sup>26</sup> See U.S. Department of the Treasury Enforcement Release: "OFAC Enters Into \$98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital Currency Transactions" (December 30, 2020) available at: [https://home.treasury.gov/system/files/126/20201230\\_bitgo.pdf](https://home.treasury.gov/system/files/126/20201230_bitgo.pdf).

<sup>27</sup> On December 10, 2020, Massachusetts Mutual Life Insurance Company (MassMutual) announced that it had purchased \$100 million in bitcoin for its general investment account. See MassMutual Press Release "Institutional Bitcoin provider NYDIG announces minority stake purchase by MassMutual" (December 10, 2020) available at: <https://www.massmutual.com/about-us/news-and-press-releases/press-releases/2020/12/institutional-bitcoin-provider-nydig-announces-minority-stake-purchase-by-massmutual>.

<sup>28</sup> See, e.g., "BlackRock's Rick Rieder says the world's largest asset manager has 'started to dabble' in bitcoin" (February 17, 2021) available at: <https://www.cnbc.com/2021/02/17/blackrock-has-started-to-dabble-in-bitcoin-says-rick-rieder.html> and "Guggenheim's Scott Miner Says Bitcoin Should Be Worth \$400,000" (December 16, 2020) available at: <https://www.bloomberg.com/news/articles/2020-12-16/guggenheim-s-scott-miner-says-bitcoin-should-be-worth-400-000>.

<sup>29</sup> See, e.g., "Harvard and Yale Endowments Among Those Reportedly Buying Crypto" (January 25, 2021) available at: <https://www.bloomberg.com/news/articles/2021-01-26/harvard-and-yale-endowments-among-those-reportedly-buying-crypto>.

<sup>30</sup> See, e.g., "Virginia Police Department Reveals Why its Pension Fund is Betting on Bitcoin" (February 14, 2019) available at: <https://finance.yahoo.com/news/virginia-police-department-reveals-why-194558505.html>.

<sup>31</sup> See, e.g., "Bridgewater: Our Thoughts on Bitcoin" (January 28, 2021) available at: <https://www.bridgewater.com/research-and-insights/our-thoughts-on-bitcoin> and "Paul Tudor Jones says he likes bitcoin even more now, rally still in the 'first inning'" (October 22, 2020) available at: <https://www.cnbc.com/2020/10/22/paul-tudor-jones-says-he-likes-bitcoin-even-more-now-rally-still-in-the-first-inning.html>.

allocating to bitcoin. The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the Staff of the Commission reviewed and which took effect automatically, and is now a reporting company.<sup>32</sup> Established companies like Tesla, Inc.,<sup>33</sup> MicroStrategy Incorporated,<sup>34</sup> and Square, Inc.,<sup>35</sup> among others, have recently announced substantial investments in bitcoin in amounts as large as \$1.5 billion (Tesla) and \$425 million (MicroStrategy). Suffice to say, bitcoin is on its way to gaining mainstream usage.

Despite these developments, access for U.S. investors to gain exposure to bitcoin via a transparent and regulated exchange-traded vehicle remains limited. As investors and advisors increasingly utilize ETPs to manage diversified portfolios (including equities, fixed income securities, commodities, and currencies) quickly, easily, relatively inexpensively, and without having to hold directly any of the underlying assets, alternatives for bitcoin exposure for U.S. investors are instead limited to: (i) Buying over-the-counter bitcoin funds ("OTC Bitcoin Funds") that are subject to premium/discount volatility; (ii) facing the technical risk, complexity and generally high fees associated with buying spot bitcoin; or (iii) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin. Meanwhile, investors in many other countries, including Canada,<sup>36</sup> are able

<sup>32</sup> See Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale Bitcoin Trust (January 31, 2020) <https://www.sec.gov/Archives/edgar/data/1588489/00000000020000953/filename1.pdf>.

<sup>33</sup> See Form 10-K submitted by Tesla, Inc. for the fiscal year ended December 31, 2020 at 23: [https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k\\_20201231.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k_20201231.htm).

<sup>34</sup> See Form 10-Q submitted by MicroStrategy Incorporated for the quarterly period ended September 30, 2020 at 8: [https://www.sec.gov/ix?doc=/Archives/edgar/data/1050446/000156459020047995/mstr-10q\\_20200930.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/1050446/000156459020047995/mstr-10q_20200930.htm).

<sup>35</sup> See Form 10-Q submitted by Square, Inc. for the quarterly period ended September 30, 2020 at 51: <https://www.sec.gov/ix?doc=/Archives/edgar/data/1512673/00015126732000012/sq-20200930.htm>.

<sup>36</sup> The Exchange notes that the Purpose Bitcoin ETF, a publicly listed physical bitcoin ETP recently launched in Canada, reportedly reached \$421.8 million in assets under management ("AUM") in two days, demonstrating the demand for a North American market listed bitcoin exchange-traded product ("ETP"). The Purpose Bitcoin ETF also offers a class of units that is U.S. dollar denominated, which could appeal to U.S. investors. Without an approved bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase these shares in order to get access to bitcoin exposure. Given the separate regulatory regime and the potential difficulties associated with

to use more traditional exchange listed and traded products to gain exposure to bitcoin, disadvantaging U.S. investors and leaving them with riskier and more expensive means of getting bitcoin exposure.<sup>37</sup>

#### Institutional Adoption and Investor Interest in Bitcoin

As noted above, institutional adoption and investor interest in bitcoin has increased significantly over the last two years. A recent independent investor survey, The Institutional Investors Digital Asset Survey (the "Survey")<sup>38</sup> conducted by Fidelity Digital Assets, Fidelity Center for Applied Technology and Fidelity Consulting in collaboration with Greenwich Associates from November 2019 to early March 2020 found that i. 36% of institutional investors surveyed currently invest in digital assets; ii. almost 60% of all investors surveyed have a neutral or positive perception toward digital assets; and iii. more than 80% of investors indicated they would be interested in institutional investment products that hold digital assets. The Survey reported that the portion of U.S. investors who have an allocation to digital assets increased to 27% from 22% in 2019 and cited multiple factors that may be driving ownership including, but not limited to, the entrance of incumbent custody, trading and derivatives service providers; and the expansion of the types of regulated derivatives available to institutional investors, which fueled awareness of digital assets.

The Survey reported that exposure to digital assets continues to grow with

any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP.

<sup>37</sup> The Exchange notes that securities regulators in a number of other countries have either approved or otherwise allowed the listing and trading of bitcoin ETPs. Specifically, these funds include the Purpose Bitcoin ETF, Bitcoin ETF, VanEck Vectors Bitcoin ETN, WisdomTree Bitcoin ETP, Bitcoin Tracker One, BTCEtC, bitcoin ETP, Amun Bitcoin ETP, Amun Bitcoin Suisse ETP, 21Shares Short Bitcoin ETP, CoinShares Physical Bitcoin ETP.

<sup>38</sup> The Survey included interviews with 774 institutional investors. 393 respondents were based in the U.S. and 381 respondents were based in Europe. The Survey spanned a variety of investor segments, including high-net worth individuals, financial advisors, family offices, crypto hedge and venture funds, traditional hedge funds, endowments and foundations. The first installment of The Institutional Investors Digital Assets Survey covered the period of November 2018 to January 2019 and surveyed over 400 U.S. investors. Thus, the year-over-year comparisons compare only the responses of U.S. investors. The Survey is available at the following link: [https://www.fidelitydigitalassets.com/bin-public/060/www\\_fidelity\\_com/documents/FDAS/institutional-investors-digital-asset-survey.pdf](https://www.fidelitydigitalassets.com/bin-public/060/www_fidelity_com/documents/FDAS/institutional-investors-digital-asset-survey.pdf).

22% of U.S. respondents invested in digital assets having exposure via futures, a substantial increase relative to 9% of U.S. investors surveyed in 2019. The Survey also reported that 91% of institutional investors that plan to make an allocation to digital assets expect to have at least 0.5% of their portfolio in digital assets within five years. The increase in institutional use and interest in the digital asset market is a benefit to all investors. As institutional participation increases, this helps to solidify the market for digital assets and assists in maturing the ecosystem for digital assets, creating a more sound structure for this asset class. ETPs are well established vehicles with a structure that has proven to be beneficial to investors based on the transparency, competition with respect to fees charged, and disclosures to help educate investors on risks associated with investment.

The Exchange understands the Commission's previous focus on potential manipulation of a bitcoin ETP in prior disapproval orders, but now believes that such concerns have been sufficiently mitigated. The Exchange believes that the significant increase in investor participation in and institutional adoption of bitcoin have facilitated the maturation of the bitcoin trading ecosystem. As such, the Exchange believes that approving this proposal (and comparable proposals submitted hereafter) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to reduce risk to U.S. investors by: (i) Reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing certain risks associated with investing in operating companies that are proxies for bitcoin exposure; and (iv) providing an alternative to custodizing spot bitcoin.

#### (i) OTC Bitcoin Funds and Premium/Discount Volatility

OTC Bitcoin Funds are generally designed to provide exposure to bitcoin in a manner similar to the Shares. However, unlike the Shares, OTC Bitcoin Funds are unable to freely offer creation and redemption in a way that incentivizes market participants to keep their shares trading in line with their NAV<sup>39</sup> and, as such, frequently trade at

<sup>39</sup> Because OTC Bitcoin Funds are not listed on an exchange, they are also not subject to the same transparency and regulatory oversight by a listing exchange as the Shares would be. In the case of the Trust, the existence of a surveillance-sharing agreement between the Exchange and the Bitcoin

price that is out of line with the value of their assets held. Historically, OTC Bitcoin Funds have traded at significant premiums or discounts compared to their NAV. A bitcoin ETP would provide an alternative to OTC Bitcoin Funds that would offer investors access to direct bitcoin exposure with real time trading and transparency on pricing/valuation, liquidity and active arbitrage—advantages of the ETP structure.

#### (ii) Spot and Proxy Exposure

Exposure to bitcoin through an ETP also presents certain advantages for investors compared to buying spot bitcoin directly. The most notable advantage is the use of the Custodian to custody the Trust's bitcoin assets. The Sponsor has carefully selected the Custodian, a New York state limited liability trust,<sup>40</sup> due to its manner of holding the Trust's bitcoin. This includes, among others, the use of “cold” (offline) storage to hold private keys and the employment by the Custodian of a certain degree of cybersecurity measures and operational best practices.<sup>41</sup> By contrast, an investor holding bitcoin through a cryptocurrency exchange lacks these protections. Typically, cryptocurrency exchanges hold most, if not all, investors' bitcoin in “hot” (internet-connected) storage and do not make any commitments to indemnify investors or to observe any particular cybersecurity standard. Meanwhile, an investor holding spot bitcoin directly in a self-hosted wallet may suffer from inexperience in private key management (e.g., insufficient password protection, lost key, etc.), which could cause them

Futures market results in increased investor protections compared to OTC Bitcoin Funds.

<sup>40</sup> New York state trust companies are subject to rigorous oversight similar to other types of entities, such as nationally chartered banking entities, that hold customer assets. Like national banks, they must obtain specific approval of their primary regulator for the exercise of their fiduciary powers. Moreover, limited purpose trust companies engaged in the custody of digital assets are subject to even more stringent requirements than national banks which, following initial approval of trust powers, generally can exercise those powers broadly without further approval of the OCC. In contrast, NYDFS requires in their approval orders that limited purpose trust companies obtain separate approval for all material changes in business.

<sup>41</sup> In addition to enforcing specific regulatory reporting requirements, NYDFS consistently exercises its broad authority to examine trust companies for compliance with law, risk management and general safety and soundness considerations, including to assess items such as the internal controls, client records and segregation of assets topics that are typically important to the ability of an entity to act as a qualified custodian. In this regard, the Custodian is subject to annual examination, with specific attention to its internal controls and risk management systems.

to lose some or all of their bitcoin holdings. In the Custodian, the Trust has engaged a regulated and licensed entity highly experienced in bitcoin custody, with dedicated, trained employees and procedures to manage the private keys to the Trust's bitcoin, and which is accountable for failures. Thus, with respect to custody of the Trust's bitcoin assets, the Trust presents advantages for investors compared to owning spot bitcoin directly.

Finally, as described in the Background section above, recently a number of operating companies engaged in unrelated businesses—such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company)—have announced investments as large as \$1.5 billion in bitcoin.<sup>42</sup> Without access to bitcoin exchange-traded products, investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek.<sup>43</sup> In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a bitcoin ETP.<sup>44</sup> Such operating companies, however, are imperfect bitcoin proxies and provide investors with partial or indirect bitcoin exposure paired with a host of additional risks associated with whichever operating company they decide to purchase. Additionally, the disclosures provided by the aforementioned operating companies with respect to risks relating to their bitcoin holdings are generally substantially smaller than the registration statement of a bitcoin ETP, including the Registration Statement,

<sup>42</sup> It has been announced that MicroStrategy is currently contemplating a \$600 million convertible note offering for the purpose of acquiring bitcoin. See: <https://www.cnbc.com/2021/02/16/microstrategy-shares-rise-after-revealing-plans-to-buy-more-bitcoin.html>.

<sup>43</sup> In August 2017, the Commission's Office of Investor Education and Advocacy warned investors about situations where companies were publicly announcing events relating to digital coins or tokens in an effort to affect the price of the company's publicly traded common stock. See [https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia\\_icorelatedclaims](https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia_icorelatedclaims).

<sup>44</sup> See, e.g., “7 public companies with exposure to bitcoin” (February 8, 2021) available at: <https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html>; and “Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas” (February 19, 2021) available at: <https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself-.html>.

typically amounting to a few sentences of narrative description and a handful of risk factors.<sup>45</sup>

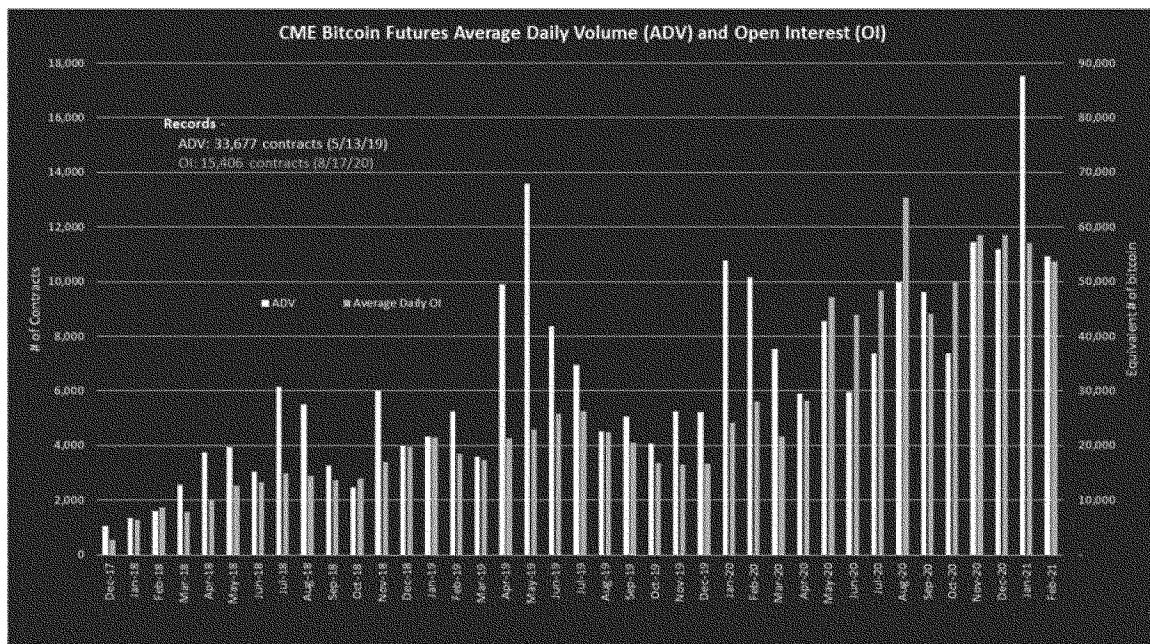
#### Bitcoin Futures

CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.<sup>46</sup> The contracts trade and settle like other

cash-settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has trended consistently up since launch and/or accelerated upward in the past year. For example, there was approximately \$28 billion in trading in Bitcoin Futures in December 2020 compared to \$737 million, \$1.4 billion, and \$3.9 billion in total trading in

December 2017, December 2018, and December 2019, respectively. Bitcoin Futures traded over \$1.2 billion per day on the CME in December 2020 and represented \$1.6 billion in open interest compared to \$115 million in December 2019. This general upward trend in trading volume and open interest is captured in the following chart.

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Similarly, the number of large open interest holders<sup>47</sup> has continued to increase even as the price of bitcoin has

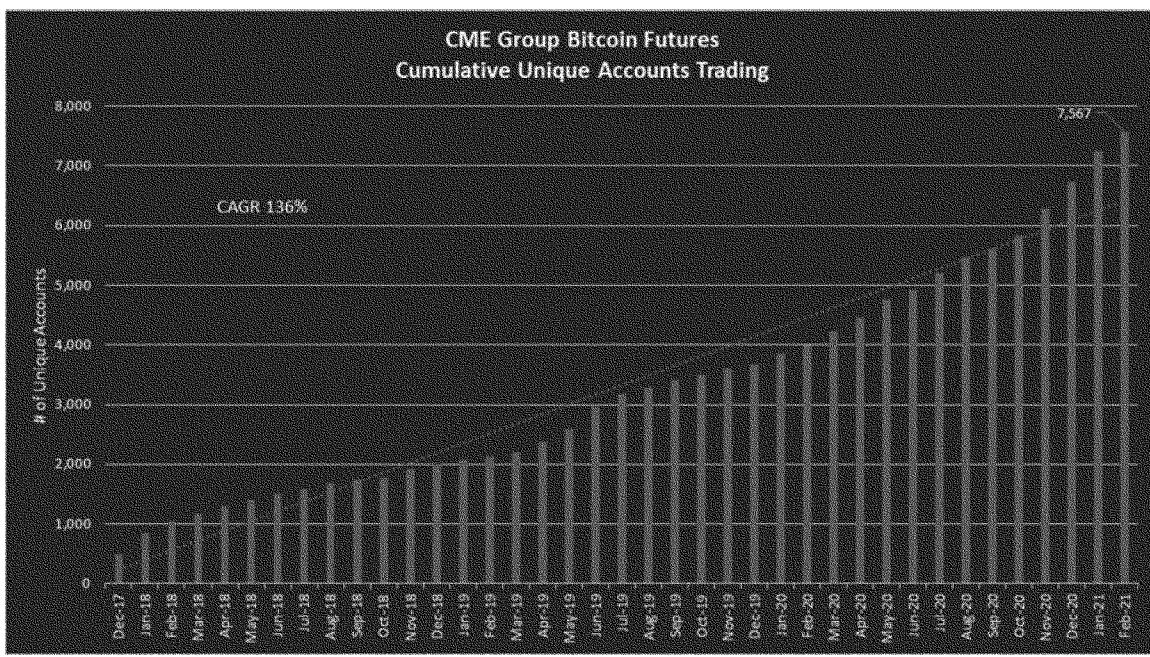
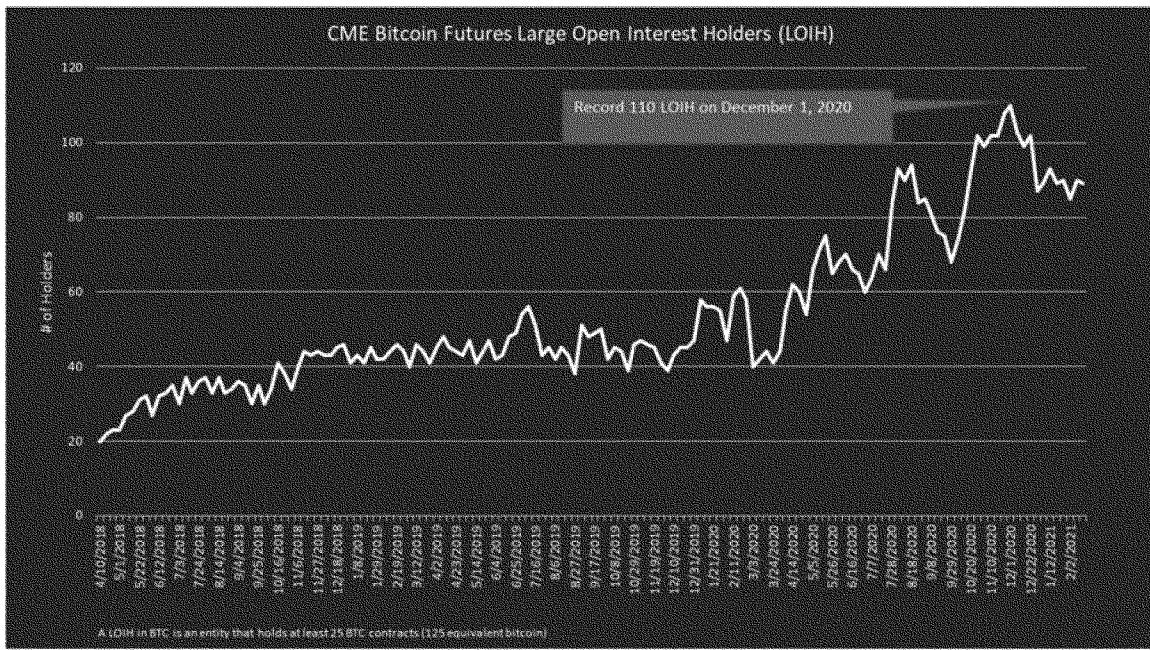
risen, as have the number of unique accounts trading Bitcoin Futures.

<sup>45</sup> See, e.g., Tesla 10-K for the year ended December 31, 2020, which mentions bitcoin just nine times: [https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k\\_20201231.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k_20201231.htm)

<sup>46</sup> According to CME, the CME CF Bitcoin Reference Rate aggregates the trade flow of major bitcoin spot exchanges during a specific calculation

window into a once-a-day reference rate of the U.S. dollar price of bitcoin. Calculation rules are geared toward maximum transparency and real-time replicability in underlying spot markets, including Bitstamp, Coinbase, Gemini, itBit, and Kraken. For additional information, refer to <https://www.cmegroup.com/trading/cryptocurrency-indices/cf-bitcoin-reference-rate.html?redirect=/trading/cf-bitcoin-reference-rate.html>.

<sup>47</sup> A large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately \$30,000 per bitcoin on 12/31/20, more than 80 firms had outstanding positions of greater than \$3.8 million in Bitcoin Futures.



The Sponsor further believes that academic research corroborates the overall trend outlined above and supports the thesis that the Bitcoin Futures pricing leads the spot market and, thus, a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP. Specifically, the Sponsor believes that such research indicates that bitcoin futures lead the bitcoin spot market in price formation.<sup>48</sup>

#### Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,<sup>49</sup> including Commodity-Based Trust Shares,<sup>50</sup> to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) The requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices;<sup>51</sup> and

<sup>48</sup> See Hu, Y., Hou, Y. and Oxley, L. (2019). "What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective" (available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/>). This academic research paper concludes that "There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective."

<sup>49</sup> See Exchange Rule 14.11(f).

<sup>50</sup> Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

<sup>51</sup> As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that "other means to prevent fraudulent and manipulative acts and practices" exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require

(ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that it has sufficiently demonstrated that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated. Specifically, the Exchange lays out below why it believes that the significant increase in trading volume in Bitcoin Futures, the growth of liquidity at the inside in the spot market for bitcoin, and certain features of the Shares and the Index<sup>52</sup> mitigate potential manipulation concerns since the Commission last reviewed an exchange proposal to list and trade a bitcoin ETP should be the central consideration as the Commission determines whether to approve this proposal.

#### (i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place<sup>53</sup> with a regulated market of significant size. Both the

manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

<sup>52</sup> The "Index" refers to the Fidelity Bitcoin Index PR.

<sup>53</sup> As previously articulated by the Commission, "The standard requires such surveillance-sharing agreements since "they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur." The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party." The Commission has historically held that joint membership in ISG constitutes such a surveillance sharing agreement. See Wilshire Phoenix Disapproval.

Exchange and CME are members of the Intermarket Surveillance Group (the "ISG").<sup>54</sup> The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which the Exchange believes that it does. The terms "significant market" and "market of significant size" include a market (or group of markets) as to which: (a) There is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.<sup>55</sup>

The Commission has also recognized that the "regulated market of significant size" standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that "other means to prevent fraudulent and manipulative acts and practices" are sufficient to justify dispensing with the requisite surveillance-sharing agreement.<sup>56</sup>

#### (a) Manipulation of the ETP

The significant growth in Bitcoin Futures across each of trading volumes, open interest, large open interest holders, and total market participants since the Wilshire Phoenix Disapproval was issued are reflective of that market's growing influence on the spot price, which according to the academic research cited above, was already leading the spot price in 2018 and 2019. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index<sup>57</sup>) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because

<sup>54</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

<sup>55</sup> See Wilshire Phoenix Disapproval.

<sup>56</sup> See Winklevoss Order at 37580. The Commission has also specifically noted that it "is not applying a "cannot be manipulated" standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met. *Id.* at 37582.

<sup>57</sup> As further described below, the "Index" for the Fund is the Fidelity Bitcoin Index PR. The Index is constructed using bitcoin price feeds from eligible bitcoin spot markets. The current exchange composition of the Index is Bitstamp, Coinbase, Gemini, itBit and Kraken.

the Index is based on spot prices. Further, the Trust receives and holds only bitcoin, which, as further described below, reduces the potential for manipulation of the Shares through manipulation of the Index or any of its individual constituents, again emphasizing that a potential manipulator of the Shares would have to manipulate the entirety of the bitcoin spot market, which is led by the Bitcoin Futures market. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

**(b) Predominant Influence on Prices in Spot and Bitcoin Futures**

The Exchange also believes that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market (or spot market) for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap (approximately \$1 trillion), and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from CoinRoutes from February 2021, the cost to buy or sell \$5 million worth of bitcoin averages roughly 10 basis points with a market impact of 30 basis points.<sup>58</sup> For a \$10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, a market participant could enter a market buy or sell order for \$10 million of bitcoin and only move the market 0.5%. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market—which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin. As such, the combination of Bitcoin Futures leading price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures

<sup>58</sup> These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

markets, satisfying part (b) of the test outlined above.

**(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices**

As noted above, the Commission also permits a listing exchange to demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange believes that such conditions are present. Specifically, the significant liquidity in the spot market and the impact of market orders on the overall price of bitcoin mean that attempting to move the price of bitcoin is costly and has grown more expensive over the past year. In January 2020, for example, the cost to buy or sell \$5 million worth of bitcoin averaged roughly 30 basis points (compared to 10 basis points in 2/2021) with a market impact of 50 basis points (compared to 30 basis points in 2/2021).<sup>59</sup> For a \$10 million market order, the cost to buy or sell was roughly 50 basis points (compared to 20 basis points in 2/2021) with a market impact of 80 basis points (compared to 50 basis points in 2/2021). As the liquidity in the bitcoin spot market increases, it follows that the impact of \$5 million and \$10 million orders will continue to decrease the overall impact in spot price.

Additionally, offering in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. While the Sponsor believes that the Index which it uses to value the Trust's bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are available in-kind makes the manipulability of the Index significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.<sup>60</sup> When authorized participants are creating with the Trust, they need to deliver a certain number of bitcoin per share (regardless of the valuation used) and

<sup>59</sup> These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

<sup>60</sup> While the Index will not be particularly important for the creation and redemption process, it will be used for calculating fees.

when they're redeeming, they can similarly expect to receive a certain number of bitcoin per share. As such, even if the price used to value the Trust's bitcoin is manipulated (which the Sponsor believes that the Index methodology is resistant to), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the Index because there is little financial incentive to do so.

**Wise Origin Bitcoin Trust**

Delaware Trust Company is the trustee (“Trustee”). Fidelity Service Company, Inc. (“FSC”) will be the administrator (“Administrator”). A third-party transfer agent (the “Transfer Agent”) will facilitate the issuance and redemption of Shares of the Trust, respond to correspondence by Trust Shareholders and others relating to its duties, maintain Shareholder accounts, and make periodic reports to the Trust.<sup>61</sup> An affiliate of the Sponsor, Fidelity Distributors Corporation, will be the marketing agent (“Marketing Agent”) in connection with the creation and redemption of “Baskets” of Shares. The Sponsor provides assistance in the marketing of the Shares. Fidelity Digital Assets Services, LLC will serve as the Trust's custodian (the “Custodian”).

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in and ownership of the Trust. The Trust's assets will consist of bitcoin held by the Custodian on behalf of the Trust. The Trust generally does not intend to hold cash or cash equivalents. However, there may be situations where the Trust will unexpectedly hold cash on a temporary basis.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,<sup>62</sup> nor a commodity pool for purposes of the Commodity Exchange Act (“CEA”), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

When the Trust sells or redeems its Shares, it will do so in “in-kind” transactions in blocks of Shares (a

<sup>61</sup> The Exchange notes that the Sponsor is finalizing negotiations with several service providers and it will submit an amendment to this proposal upon finalization of those arrangements.

<sup>62</sup> 15 U.S.C. 80a-1.

“Creation Basket”) at the Trust’s NAV. Authorized participants will deliver, or facilitate the delivery of, bitcoin to the Trust’s account with the Custodian in exchange for Shares when they purchase Shares, and the Trust, through the Custodian, will deliver bitcoin to such authorized participants when they redeem Shares with the Trust.

Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust’s assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Trust.

#### Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Trust is to seek to track the performance of bitcoin, as measured by the Index, adjusted for the Trust’s expenses and other liabilities.

In seeking to achieve its investment objective, the Trust will hold bitcoin and will value its Shares daily as of 4:00 p.m. Eastern time using the same methodology used to calculate the Index and process all creations and redemptions in transactions with authorized participants. The Trust is not actively managed.

#### The Index

As described in the Registration Statement, for purposes of calculating the Trust’s NAV per Share, the Trust’s holdings of bitcoin will be valued using the same methodology as used to calculate the Index. The Index is designed to reflect the performance of bitcoin in U.S. dollars. The Index is constructed using bitcoin price feeds from eligible bitcoin spot markets and the VWMP methodology, calculated every 15 seconds based on VWMP spot market data over rolling 5-minute increments to develop a bitcoin price composite. The current exchange composition of the Index is Bitstamp, Coinbase, Gemini, itBit and Kraken. The Index methodology was developed by Fidelity Product Services, LLC (the “Index Provider”) and is administered by the Fidelity Index Committee. Coin Metrics, Inc. is the third-party calculation agent for the Index.<sup>63</sup>

The Index is calculated using a volume-weighted median price approach. The Index market value is the volume-weighted median price of

bitcoin in U.S. dollars over the previous five minutes, which is calculated by (1) ordering all individual transactions on eligible spot markets over the previous five minutes by price, and then (2) selecting the price associated with the 50th percentile of total volume. Using rolling five-minute segments means malicious actors would need to sustain efforts to manipulate the market over an extended period of time, or would need to replicate efforts multiple times across exchanges, potentially triggering review. This extended period also supports authorized participant activity by capturing volume over a longer time period, rather than forcing authorized participants to mark an individual close or auction. The use of a median price reduces the ability of outlier prices to impact the NAV, as it systematically excludes those prices from the NAV calculation. The use of a volume-weighted median (as opposed to a traditional median) serves as an additional protection against attempts to manipulate the NAV by executing a large number of low-dollar trades, because any manipulation attempt would have to involve a majority of global spot bitcoin volume in a three-minute window to have any influence on the NAV. Further, removing the highest and lowest prices further protects against attempts to manipulate the NAV, requiring bad actors to act on multiple exchanges at once to have any ability to influence the price.

#### Availability of Information

In addition to the price transparency of the Index, the Trust will provide information regarding the Trust’s bitcoin holdings as well as additional data regarding the Trust. The Trust will provide an Intraday Indicative Value (“IIV”) per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange’s Regular Trading Hours (9:30 a.m. to 4:00 p.m. Eastern time). The IIV will be calculated by using the prior day’s closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust’s bitcoin holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange’s Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) The current NAV per Share daily and the prior business day’s NAV and the reported closing price; (b) the BZX Official Closing Price<sup>64</sup> in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate the Trust’s holdings on a daily basis on the Trust’s website. The value of the Index will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (“CTA”).

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Index. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year.

#### Net Asset Value

NAV means the total assets of the Trust including, but not limited to, all bitcoin and cash, if any, less total liabilities of the Trust, each determined on the basis of generally accepted accounting principles. The NAV of the Trust is calculated by taking the fair market value of its total assets based on the volume-weighted median price of bitcoin used for the calculation of the Index, subtracting any liabilities (which include accrued expenses), and dividing that total by the total number of

<sup>63</sup> The Sponsor’s affiliates have an ownership interest in Coin Metrics, Inc.

<sup>64</sup> As defined in Rule 11.23(a)(3), the term “BZX Official Closing Price” shall mean the price disseminated to the consolidated tape as the market center closing trade.

outstanding Shares. The Administrator calculates the NAV of the Trust once each Exchange trading day. The NAV for a normal trading day will be released after 4:00 p.m. Eastern time. Trading during the core trading session on the Exchange typically closes at 4:00 p.m. Eastern time. However, NAVs are not officially struck until later in the day (often by 5:30 p.m. Eastern time and almost always by 8:00 p.m. Eastern time). The pause between 4:00 p.m. Eastern time and 5:30 p.m. Eastern time (or later) provides an opportunity to algorithmically detect, flag, investigate, and correct unusual pricing should it occur. *[sic]*.

#### Creation and Redemption of Shares

According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more baskets. Purchase orders must be placed by the time noted in the Authorized Participant Agreement or as provided separately to all Authorized Participants. The day on which an order is received is considered the purchase order date. The total deposit of bitcoin required is an amount of bitcoin that is in the same proportion to the total assets of the Trust, net of accrued expenses and other liabilities, on the date the order to purchase is properly received, as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. Each night, the Sponsor will publish the amount of bitcoin that will be required in exchange for each creation order. The Administrator determines the required deposit for a given day by dividing the number of bitcoin held by the Trust as of the opening of business on that business day, adjusted for the amount of bitcoin constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by the aggregation of Shares associated with a Creation Basket. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

#### Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange will obtain a representation that the Trust's NAV will

be calculated daily and that these values and information about the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) Issued by a trust that holds a specified commodity<sup>65</sup> deposited with the trust; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus. The Delaware Trust Company also has the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a). No change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker ("Market Maker") in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives,

which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, e.g., Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01 where the price is greater than

<sup>65</sup> For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. As noted above, the CFTC has opined that Bitcoin is a commodity as defined in Section 1a(9) of the Commodity Exchange Act. *See* Coinflip.

\$1.00 per share or \$0.0001 where the price is less than \$1.00 per share.

#### Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and Bitcoin Futures via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.<sup>66</sup>

#### Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) The procedures for the creation and redemption of Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours<sup>67</sup> when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information.

<sup>66</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

<sup>67</sup> Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>68</sup> in general and Section 6(b)(5) of the Act<sup>69</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts,<sup>70</sup> including Commodity-Based Trust Shares,<sup>71</sup> to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) The requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices;<sup>72</sup> and

<sup>68</sup> 15 U.S.C. 78f.

<sup>69</sup> 15 U.S.C. 78f(b)(5).

<sup>70</sup> See Exchange Rule 14.11(f).

<sup>71</sup> Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

<sup>72</sup> As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that "other means to prevent fraudulent and manipulative acts and practices" exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other exchanges because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets

(ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest.

The Exchange believes that the proposal is, in particular, designed to protect investors and the public interest. With the growth of OTC Bitcoin Funds over the past year, so too has grown the potential risk to U.S. investors. Significant and prolonged premiums and discounts, significant premium/discount volatility, high fees, insufficient disclosures, and technical hurdles are putting U.S. investor money at risk on a daily basis that could potentially be eliminated through access to a bitcoin ETP. As such, the Exchange believes that this proposal acts to limit the risk to U.S. investors that are increasingly seeking exposure to bitcoin through the elimination of significant and prolonged premiums and discounts, the reduction of significant premium/discount volatility, the reduction of management fees through meaningful competition, the avoidance of risks associated with investing in operating companies that are imperfect proxies for bitcoin exposure, and protection from risk associated with custodying spot bitcoin by providing direct, 1-for-1 exposure to bitcoin in a regulated, transparent, exchange-traded vehicle designed to reduce the likelihood of significant and prolonged premiums and discounts with its open-ended nature as well as the ability of authorized participants to create and redeem on a daily basis.

The Exchange also believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that it has sufficiently demonstrated that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated. Specifically, the Exchange believes that the significant increase in trading volume in Bitcoin Futures, the growth of liquidity at the inside in the spot market for bitcoin, and certain features of the Shares and the Index mitigate potential manipulation concerns should be the central consideration as the Commission determines whether to approve this proposal.

means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

**(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices**

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place<sup>73</sup> with a regulated market of significant size. Both the Exchange and CME are members of ISG.<sup>74</sup> The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which the Exchange believes that it does. The terms “significant market” and “market of significant size” include a market (or group of markets) as to which: (a) There is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.<sup>75</sup>

The Commission has also recognized that the “regulated market of significant size” standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance-sharing agreement.<sup>76</sup>

<sup>73</sup> As previously articulated by the Commission, “The standard requires such surveillance-sharing agreements since “they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.” The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.” The Commission has historically held that joint membership in ISG constitutes such a surveillance sharing agreement. See Wilshire Phoenix Disapproval.

<sup>74</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

<sup>75</sup> See Wilshire Phoenix Disapproval.

<sup>76</sup> See Winklevoss Order at 37580. The Commission has also specifically noted that it “is not applying a “cannot be manipulated” standard;

**(a) Manipulation of the ETP**

The significant growth in Bitcoin Futures across each of trading volumes, open interest, large open interest holders, and total market participants since the Wilshire Phoenix Disapproval was issued are reflective of that market’s growing influence on the spot price, which according to the academic research cited above, was already leading the spot price in 2018 and 2019. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. Further, the Trust allows for in-kind creation and redemption, which, as further described below, reduces the potential for manipulation of the Shares through manipulation of the Index or any of its individual constituents, again emphasizing that a potential manipulator of the Shares would have to manipulate the entirety of the bitcoin spot market, which is led by the Bitcoin Futures market. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

**(b) Predominant Influence on Prices in Spot and Bitcoin Futures**

The Exchange also believes that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market (or spot market) for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin’s market cap (approximately \$1 trillion), and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from CoinRoutes from February 2021, the cost to buy or sell \$5 million worth of bitcoin averages roughly 10 basis points with a market impact of 30 basis points.<sup>77</sup> For a \$10 million market order,

instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met. *Id.* at 37582.

<sup>77</sup> These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, a market participant could enter a market buy or sell order for \$10 million of bitcoin and only move the market 0.5%. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market—which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin. As such, the combination of Bitcoin Futures leading price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets, satisfying part (b) of the test outlined above.

**(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices**

As noted above, the Commission also permits a listing exchange to demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange believes that such conditions are present. Specifically, the significant liquidity in the spot market and the impact of market orders on the overall price of bitcoin mean that attempting to move the price of bitcoin is costly and has grown more expensive over the past year. In January 2020, for example, the cost to buy or sell \$5 million worth of bitcoin averaged roughly 30 basis points (compared to 10 basis points in 2/2021) with a market impact of 50 basis points (compared to 30 basis points in 2/2021).<sup>78</sup> For a \$10 million market order, the cost to buy or sell was roughly 50 basis points (compared to 20 basis points in 2/2021) with a market impact of 80 basis points (compared to 50 basis points in 2/2021). As the liquidity in the bitcoin spot market increases, it follows that the impact of \$5 million and \$10 million orders will continue to decrease the overall impact in spot price.

Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

<sup>78</sup> These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

Additionally, offering in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. While the Sponsor believes that the independently calculated Index which it uses to value the Trust's bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are available in-kind makes the manipulability of the Index significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.<sup>79</sup> When authorized participants are creating with the Trust, they need to deliver a certain number of bitcoin per share (regardless of the valuation used) and when they're redeeming, they can similarly expect to receive a certain number of bitcoin per share. As such, even if the price used to value the Trust's bitcoin is manipulated (which the Sponsor believes that its methodology is resistant to), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the Index because there is little financial incentive to do so.

#### Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or

the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

#### Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about bitcoin and will be available regarding the Trust and the Shares. In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. Eastern time). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) The current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the

life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The value of the Index will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Index. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

#### *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 purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its

<sup>79</sup>While the Index will not be particularly important for the creation and redemption process, it will be used for calculating fees.

reasons for so finding or (ii) as to which the Exchange 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2021-039 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-2021-039. 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-CboeBZX-2021-039 and should be submitted on or before June 22, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>80</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

[FR Doc. 2021-11402 Filed 5-28-21; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-92011; File No. SR-CBOE-2021-020]**

#### **Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Adopt Rule 6.10 To Introduce a Voluntary Compression Service**

May 25, 2021.

On March 24, 2021, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt Rule 6.10 to introduce a voluntary compression service for Market Makers. The proposed rule change was published for comment in the *Federal Register* on April 12, 2021.<sup>3</sup> The Commission has received two comment letters on the proposed rule change.<sup>4</sup>

Section 19(b)(2) of the Act<sup>5</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is May 27, 2021.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The

<sup>80</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 91482 (April 6, 2021), 86 FR 19067.

<sup>4</sup> Comments received on the proposed rule change are available at: <https://www.sec.gov/comments/sr-cboe-2021-020/srcboe2021020.htm>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the novel proposed rule change, including the comments received thereon. Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> the Commission designates July 11, 2021, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-CBOE-2021-020).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

[FR Doc. 2021-11404 Filed 5-28-21; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-92014; File No. SR-FICC-2021-003]**

#### **Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Add the Sponsored GC Service and Make Other Changes**

May 25, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 12, 2021, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency.<sup>3</sup> 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 proposed rule change consists of modifications to the FICC Government

<sup>6</sup> *Id.*

<sup>7</sup> 17 CFR 200.30-3(a)(31).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> On May 12, 2021, FICC filed this proposed rule change as an advance notice (SR-FICC-2021-801) with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b-4(n)(1)(i) under the Act, 17 CFR 240.19b-4(n)(1)(i). A copy of the advance notice is available at <http://www.dtcc.com/legal/sec-rule-filings.aspx>.

Securities Division (“GSD”) Rulebook (“Rules”)<sup>4</sup> in order to (i) add a new service offering, which would allow a Sponsoring Member to submit for clearing Repo Transactions with its Sponsored Members on securities that are represented by Generic CUSIP Numbers and held under a triparty custodial arrangement (the “Sponsored GC Service”), (ii) add language to Rule 3A to allow FICC to recognize, for Capped Contingency Liquidity Facility<sup>®</sup> (“CCLF”) calculation purposes, any offsetting settlement obligations as between a Sponsoring Member’s netting account and its Sponsoring Member Omnibus Account to ensure that a Sponsoring Member’s CCLF obligation is calculated in a manner that more closely aligns with the liquidity risk associated with Sponsored Member Trades, (iii) remove the requirement from Section 2 of Rule 3A that a Sponsoring Member provide a quarterly representation to FICC that each of its Sponsored Members is a “qualified institutional buyer” as defined in Rule 144A of the Securities Act of 1933, as amended (“Rule 144A”), or is a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i) of Rule 144A, satisfies the financial requirements necessary to be a “qualified institutional buyer” as specified in that paragraph, and (iv) make a clarification, certain corrections, and certain technical changes, as described in greater detail below.

## II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### (A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The purpose of the proposed rule change is to amend the Rules to (i) add a new service offering, the Sponsored GC Service, (ii) add language to Rule 3A to allow FICC to recognize, for CCLF calculation purposes, any offsetting

settlement obligations as between a Sponsoring Member’s netting account and its Sponsoring Member Omnibus Account to ensure that a Sponsoring Member’s CCLF obligation is calculated in a manner that more closely aligns with the liquidity risk associated with Sponsored Member Trades, (iii) remove the requirement from Section 2 of Rule 3A that a Sponsoring Member provide a quarterly representation to FICC that each of its Sponsored Members is a “qualified institutional buyer” as defined in Rule 144A, or is a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i) of Rule 144A, satisfies the financial requirements necessary to be a “qualified institutional buyer” as specified in that paragraph, and (iv) make a clarification, certain corrections, and certain technical changes, as described in greater detail below.

#### (i) Background

Under Rule 3A (Sponsoring Members and Sponsored Members), certain Netting Members are permitted to sponsor, as Sponsoring Members, “qualified institutional buyers” as defined by Rule 144A, and certain legal entities that, although not organized as entities specifically listed in paragraph (a)(1)(i) of Rule 144A, satisfy the financial requirements necessary to be “qualified institutional buyers” as specified in that paragraph into FICC/GSD membership.<sup>5</sup> Under Rule 3A, a Sponsoring Member is permitted to submit to FICC for comparison, Novation, and netting certain types of eligible delivery versus payment (“DVP”) securities transactions (“Sponsored Member Trades”).<sup>6</sup> A Sponsoring Member is required to establish an omnibus account at FICC for its Sponsored Members’ positions arising from such Sponsored Member Trades (“Sponsoring Member Omnibus Account”), which is separate from the Sponsoring Member’s regular netting accounts.<sup>7</sup> For operational and

<sup>5</sup> Rule 3A, Section 3(a), *supra* note 4.

<sup>6</sup> Rule 3A, Section 5, *supra* note 4. The term “Sponsored Member Trade” means a transaction that satisfies the requirements of Section 5 of Rule 3A and that is (a) between a Sponsored Member and its Sponsoring Member or (b) between a Sponsored Member and a Netting Member. Rule 1, *supra* note 4.

<sup>7</sup> The term “Sponsoring Member Omnibus Account” means an Account maintained by a Sponsoring Member that contains the activity of its Sponsored Members that is submitted to FICC. A Sponsoring Member may elect to establish one or more Sponsoring Member Omnibus Accounts. Each Sponsoring Member Omnibus Account may contain activity within the meaning of clause (a) of the Sponsored Member Trade definition or activity within the meaning of clause (b) of such definition. The Sponsoring Member Omnibus Account shall be

administrative purposes, FICC interacts solely with the relevant Sponsoring Member as processing agent for purposes of the day-to-day satisfaction of its Sponsored Members’ obligations to or from FICC, including their securities and funds-only settlement obligations.<sup>8</sup>

The current Sponsoring Member/Sponsored Member Service (the “Service”), which has been in existence since 2005, has seen a steady increase in the number of Sponsoring Members, in the number of Sponsored Members and in the volume of Sponsored Member Trades over the past three years.<sup>9</sup> One of the main benefits of the Service is that it provides Sponsoring Members with the ability to offset on their balance sheets their obligations to FICC on Sponsored Member Trades with their Sponsored Members against their obligations to FICC on other eligible FICC-cleared activity, including trades with other Netting Members.

In addition, the Service allows Sponsoring Members to take lesser capital charges for Repo Transactions with Sponsored Members than would be required were such transactions uncleared.

By alleviating balance sheet and capital constraints on Sponsoring Members, the Service allows eligible institutional firms to engage in greater activity than may otherwise be feasible, which in turn increases the liquidity available in the repo market. Such greater liquidity provides stability in the market and additionally increases potential returns for investors in both cash provider institutions and collateral provider institutions. For example, the increased liquidity the Service provides allows investors in institutional firms that act as cash provider Sponsored Members to invest more of their cash than may otherwise be possible outside of clearing, which in turn allows such investors the ability to earn a greater return as a result of their institutional

separate from the Accounts associated with the Sponsoring Member’s activity as a Netting Member except as contemplated by Sections 10, 11 and 12 of Rule 3A and under the Sponsoring Member Guaranty. Rule 1, *supra* note 4.

<sup>8</sup> Rule 3A, Sections 5, 6(b), 7(a), 8(a), 8(c), 9(a), and 9(c), *supra* note 4.

<sup>9</sup> In March 2017, there was one Sponsoring Member and 1422 Sponsored Members. See Securities Exchange Act Release No. 80236 (March 14, 2017), 82 FR 14265 (March 17, 2017) (SR-FICC-2017-003). The Service currently has approximately 27 Sponsoring Members and approximately 1894 Sponsored Members. As of March 31, 2017, the aggregate Purchase Price of outstanding Sponsored Member Trades was approximately \$32.2 billion. As of March 31, 2021, the aggregate Purchase Price of outstanding Sponsored Member Trades was approximately \$286 billion.

<sup>4</sup> Capitalized terms not defined herein are defined in the Rules, available at <http://www.dtcc.com/legal/rules-and-procedures>.

firms' participation in the Service. Likewise, for investors in institutional firms that act as collateral provider Sponsored Members, the increased liquidity ensures more consistent financing opportunities than may otherwise be available outside of clearing. Such consistent access to financing may increase the amount of cash the collateral provider institutional firms have to deploy into other investment strategies, which in turn allows their investors the opportunity to earn a greater return as a result of the institutional firms' participation in the Service.

FICC believes that enabling more repo transactions to clear through FICC mitigates the risk of a large-scale exit by institutional firms from the U.S. financial market in a stress scenario.<sup>10</sup> To that point, during the recent market volatility in the first quarter of 2020, the Service in fact saw its peak volume of approximately \$564 billion, rather than a decline, and no discernable impact to volumes notwithstanding the default of a Netting Member. In addition, no Sponsored Members defaulted during that volatile period.

In recent years, FICC has taken steps to enable Sponsoring Members to submit term (rather than overnight) repo transactions for clearing. Specifically, in 2019, the Commission approved rule changes that added a new close-out mechanism and adjusted the calculation of certain funds-only settlement amounts for Sponsored Member Trades that include haircuts.<sup>11</sup> FICC believes that having more centrally cleared term repo transactions would promote the prompt and accurate clearance and settlement of securities transactions because more securities transactions would benefit from FICC's risk management and guaranty of settlement.

FICC also believes that enabling more term (rather than overnight) repo activity in the Service can serve to help reduce repo rate volatility in the market and, in turn, help to avoid events like those that occurred in September 2019, when a temporary reduction in overnight reverse repo activity by money market funds, including through

<sup>10</sup>The U.S. financial market experienced such a liquidity drain from the repo market in the 2007–2008 financial crisis when the bankruptcy of Lehman Brothers gave rise to concerns among cash provider institutional firms about the creditworthiness of their borrower counterparties. See Ben S. Bernanke, *The Courage to Act: A Memoir of a Crisis and its Aftermath* 397 (2017) (discussing “the paralyzing uncertainty [on the part of repo lenders] about banks’ financial health” in 2007 and 2008).

<sup>11</sup> See Securities Exchange Act Release No. 88262 (February 21, 2020), 85 FR 11401 (February 27, 2020) (SR-FICC-2019-007).

the Service, contributed in part to the repo rate volatility on those days.<sup>12</sup>

Although the aforementioned rule changes have resulted in some Sponsoring Members transacting term Repo Transactions with certain of their Sponsored Member clients, FICC has received additional feedback from several market participants that the Service's current requirement that all Sponsored Member Trades be margined exclusively in cash through FICC's funds-only settlement process is not conducive to certain cash provider Sponsored Member clients, particularly money market funds and other mutual funds, being able to transact term Repo Transactions with their Sponsoring Members in central clearing. Specifically, money market funds and other mutual funds are not generally operationally equipped to provide or receive cash margin in connection with their term repo activity (either bilaterally or in central clearing). These funds depend on transfers of securities to maintain required margin, and typically rely on a tri-party repo clearing bank to administer the collateral management on such trades. In particular, the tri-party repo clearing bank calculates the mark-to-market change in value of the securities underlying each repo transaction and facilitates the transfer of securities necessary to ensure the value of the securities equals a specified percentage of the outstanding principal amount of the repo transaction.

In light of this feedback and in order to support more repo activity (particularly term repo activity) to be able to be transacted in central clearing, FICC is proposing to add the Sponsored GC Service, which would allow Sponsoring Members and their Sponsored Member clients to execute Repo Transactions with each other on a general collateral basis in the same asset classes as are currently eligible for Netting Members to transact in through FICC/GSD's existing GCF Repo<sup>®</sup> Service. Such Repo Transactions would be allowed to settle on the tri-party repo platform of a Sponsored GC Clearing Agent Bank (as defined below) in a similar manner to the way Sponsoring Members and Sponsored Members settle tri-party repo transactions with each other outside of central clearing, thereby making it more operationally efficient for them to transact Repo Transactions (particularly term Repo Transactions) with each other through FICC.

<sup>12</sup> Gara Afonso et al., Federal Reserve Bank of New York, *Staff Report No. 918: The Market Events of Mid-September 2019* (March 2020), available at [https://www.newyorkfed.org/medialibrary/media/research/staff\\_reports/sr918.pdf](https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr918.pdf).

(ii) Add a New Service Offering, the Sponsored GC Service

(A) Key Parameters of the Proposed Sponsored GC Service

As described above, a Sponsoring Member would be permitted to submit to FICC for Novation the End Leg of Repo Transactions with its Sponsored Member client that would be executed in one of a series of new Generic CUSIP Numbers that would be registered with CUSIP Global Services by FICC in connection with the proposed Sponsored GC Service (each a “Sponsored GC Trade”). The proposed schedule of securities that would be eligible under each of the new Generic CUSIP Numbers that would be established for the proposed Sponsored GC Service would be identical to the current schedule of securities that are eligible under each of the existing Generic CUSIP Numbers that is currently established for the GCF Repo Service, including (i) U.S. Treasury Securities maturing in ten (10) years or less, (ii) U.S. Treasury Securities maturing in thirty (30) years or less, (iii) Non-Mortgage-Backed U.S. Agency Securities, (iv) Federal National Mortgage Association (“Fannie Mae”) and Federal Home Loan Mortgage Corporation (“Freddie Mac”) Fixed Rate Mortgage-Backed Securities, (v) Fannie Mae and Freddie Mac Adjustable Rate Mortgage-Backed Securities, (vi) Government National Mortgage Association (“Ginnie Mae”) Fixed Rate Mortgage-Backed Securities, (vii) Ginnie Mae Adjustable Rate Mortgage-Backed Securities, (viii) U.S. Treasury Inflation-Protected Securities (“TIPS”) and (ix) U.S. Treasury Separate Trading of Registered Interest and Principal of Securities (“STRIPS”).<sup>13</sup>

Consistent with FICC's processing of Repo Transactions in its existing GCF Repo Service, each Sponsored GC Trade would be required to be fully collateralized with securities eligible under the applicable Generic CUSIP Number and/or cash. However, consistent with the existing Service,

<sup>13</sup> FICC has decided to use a new series of Generic CUSIP Numbers in connection with the proposed Sponsored GC Service rather than utilizing the existing Generic CUSIP Numbers employed for GCF Repo Transactions in order to avoid any operational processing errors that could otherwise result if a trade intended for the proposed Sponsored GC Service was inadvertently processed as a GCF Repo Transaction or vice versa. To that end, a trade submitted for the proposed Sponsored GC Service would be automatically rejected by FICC if not submitted in one of the nine new Generic CUSIP Numbers earmarked for the proposed Sponsored GC Service, and a GCF Repo Transaction would be rejected by FICC if not submitted in one of the nine Generic CUSIP Numbers dedicated to the GCF Repo Service.

Sponsoring Members and Sponsored Members would be permitted to transfer a haircut on a Sponsored GC Trade so that the value of the securities at the Start Leg (the “GC Start Leg Market Value”) exceeds 100% of the initial principal balance of the Sponsored GC Trade.

Consistent with the manner in which tri-party repo transactions are settled today outside of central clearing, the Start Leg of a Sponsored GC Trade would settle on a trade for trade basis on a Sponsored GC Clearing Agent Bank’s tri-party repo platform between the Sponsoring Member and the Sponsored Member. Novation to FICC of the End Leg of a Sponsored GC Trade would occur at the time when all of the following requirements have been satisfied on a given Business Day: (i) The trade data on the Sponsored GC Trade has been submitted to FICC by the Sponsoring Member pursuant to Rule 6A by the deadline set forth in the proposed new Schedule of Sponsored GC Trade Timeframes, (ii) the data on the Sponsored GC Trade has been compared in the Comparison System pursuant to Rule 6A, (iii) the Start Leg of the Sponsored GC Trade has fully settled at the Sponsored GC Clearing Agent Bank by the deadline set forth in the proposed new Schedule of Sponsored GC Trade Timeframes, (iv) the Sponsored GC Clearing Agent Bank has, pursuant to communication links, formats, timeframes, and deadlines established by FICC for such purpose, provided to FICC a report containing such data as FICC may require from time to time, including information regarding the specific Eligible Securities that were delivered in the settlement of the Start Leg of the Sponsored GC Trade (the “Purchased GC Repo Securities”), and (v) FICC determines that the data contained in such report matches the data on the Sponsored GC Trade submitted by the Sponsoring Member to the Comparison System.

Accrued repo interest on Sponsored GC Trades would be paid and collected by FICC on a daily basis. If on any Business Day, the market value of the Purchased GC Repo Securities is less than the GC Start Leg Market Value, then the Sponsoring Member or Sponsored Member that transferred the securities in the Start Leg (the “GC Funds Borrower”) would be required to deliver to FICC (and FICC would be required to deliver to the GC Funds Borrower’s pre-Novation counterparty) additional Eligible Securities that are represented by the same Generic CUSIP Number as the Purchased GC Repo Securities (“GC Comparable Securities”) and/or cash, such that the market value

of the Purchased GC Repo Securities (inclusive of the newly transferred securities and cash) is at least equal to the GC Start Leg Market Value. If on any Business Day, the market value of the Purchased GC Repo Securities is greater than the GC Start Leg Market Value, the Sponsoring Member or Sponsored Member that received the securities in the start leg (the “GC Funds Lender”) would be required to return to FICC (and FICC would be required to return to the relevant GC Funds Borrower) Purchased GC Repo Securities such that the market value of the remaining Purchased GC Repo Securities remains at least equal to the GC Start Leg Market Value.

Such additional securities and/or cash must be delivered within the timeframe set forth in the proposed new Schedule of Sponsored GC Trade Timeframes. Any securities or cash transferred by the GC Funds Borrower pursuant to these requirements would constitute Purchased GC Repo Securities, and any Purchased GC Repo Securities transferred by the GC Funds Lender pursuant to these requirements would, following such transfer, no longer constitute Purchased GC Repo Securities.

In addition, consistent with the processing of Repo Transactions in FICC’s existing GCF Repo Service, a GC Funds Borrower would be permitted to substitute for Purchased GC Repo Securities, GC Comparable Securities and/or cash within the timeframe set forth in the proposed new Schedule of Sponsored GC Trade Timeframes.

In order to facilitate settlement, FICC would direct each GC Funds Borrower and GC Funds Lender to make any payment or delivery due to FICC in respect of a Sponsored GC Trade (except for certain funds-only settlement obligations, as discussed below) directly to the relevant Member’s pre-Novation counterparty. As a result, each transfer of Purchased GC Repo Securities and daily repo interest would be made directly between the relevant GC Funds Borrower and GC Funds Lender through the tri-party repo platform of a Sponsored GC Clearing Agent Bank.<sup>14</sup>

<sup>14</sup> FICC does not believe it is appropriate to require that each payment and delivery under a Sponsored GC Trade be made from (or to) the Sponsoring Member to (or from) FICC and separately from (or to) FICC to (or from) the Sponsored Member because inserting FICC in the middle of the payments and deliveries in this fashion would require substantial changes in operational processes for both Sponsored Members and Sponsoring Members. FICC does not believe such operational changes to be necessary in light of the fact that there can only be two pre-Novation counterparties involved in the settlement of a Sponsored GC Trade (*i.e.*, the Sponsoring Member

To that end, each GC Funds Borrower and GC Funds Lender would agree that any such direct payment or delivery discharges FICC’s obligation to make the same payment or delivery. Otherwise, all legal rights and obligations as between FICC and Sponsoring Members, and as between FICC and Sponsored Members, would be the same with respect to Sponsored GC Trades as with respect to Sponsored Member Trades in the existing Service, which is governed by Rule 3A.<sup>15</sup>

#### (B) Risk Management of Sponsored GC Trades

Sponsored GC Trades would be risk managed in a similar fashion to Sponsored Member Trades in the existing Service.

To mitigate market risk, the VaR Charge would be calculated for each Sponsored Member client individually based on such Sponsored Member client’s activity in the existing Service, as well as such Sponsored Member client’s activity in the proposed Sponsored GC Service. The VaR Charge for the Sponsoring Member Omnibus Account would continue to be the sum of the individual VaR Charges for each Sponsored Member client, *i.e.*, the Sponsoring Member Omnibus Account would continue to be gross margined.<sup>16</sup> To facilitate FICC’s ability to surveil a given Sponsored Member’s FICC-cleared activity across its Sponsored GC Trades as well as its other Sponsored Member Trades within the existing Service, both with the same Sponsoring Member and across Sponsoring Members (if applicable), the same symbol would be used to identify the Sponsored Member for purposes of trade submission and risk management under the proposal.

In addition, FICC would risk manage the mark-to-market risk associated with unaccrued repo interest on a Sponsored GC Trade in the same way it manages such risk in the GCF Repo Service, namely through a proposed new GC Interest Rate Mark component of funds-only settlement. This proposed new mark would be calculated in the same manner as the GCF Interest Rate Mark

and its Sponsored Member client), as opposed to the multitude of Netting Members that may be involved in the settlement of GCF Repo Transactions the payment and delivery obligations under which are aggregated and netted in FICC’s Netting System. For such GCF Repo Transactions, insertion of FICC in the middle of the payments and deliveries can streamline the settlement process and create significant operational efficiencies for Netting Members.

<sup>15</sup> Rule 3A, *supra* note 4.

<sup>16</sup> See Rule 3A, Section 10, *supra* note 4.

is for GCF Repo Transactions.<sup>17</sup> In light of the application of the proposed new GC Interest Rate Mark to Sponsored GC Trades, an Interest Adjustment Payment would also be applied to account for overnight use of funds by the Sponsoring Member or Sponsored Member, as applicable, based on such party's receipt from FICC of a Forward Mark Adjustment Payment (reflecting a GC Interest Rate Mark) on the previous Business Day.<sup>18</sup>

For liquidity risk management, Sponsored Member Trades between a Sponsoring Member and its Sponsored Member in the existing Service do not independently create liquidity risk for FICC. This is because FICC is not required to complete settlement of such Sponsored Member Trades in the event that either the Sponsoring Member or Sponsored Member defaults. In the event that the Sponsoring Member defaults, Section 14(c) of Rule 3A permits FICC to close out (rather than settle) the Sponsored Member Trades of the defaulter's Sponsored Members.<sup>19</sup> Likewise, if the Sponsored Member defaults, FICC is also not required to complete settlement. Rather, under Section 11 of Rule 3A, FICC may offset its settlement obligations to the Sponsoring Member against the Sponsoring Member's obligations under the Sponsoring Member Guaranty to

<sup>17</sup>The term "GCF Interest Rate Mark" means, on a particular Business Day as regards any GCF Repo Transaction that is not scheduled to settle on that day, the product of the principal value of the GCF Repo Transaction on the Scheduled Settlement Date for its End Leg multiplied by a factor equal to the absolute difference between the Repo Rate established by FICC for such Repo Transaction and its Contract Repo Rate, and then multiplied by a fraction, the numerator of which is the number of calendar days from the current day until the Scheduled Settlement Date for the End Leg of the Repo Transaction and the denominator of which is 360. If the Repo Transaction's Contract Repo Rate is greater than its System Repo Rate, then the GCF Interest Rate Mark shall be a positive value for the Reverse Repo Party, and a negative value for the Repo Party. If the Repo Transaction's Contract Repo Rate is less than its System Repo Rate, then the GCF Interest Rate Mark shall be a positive value for the Repo Party, and a negative value for the Reverse Repo Party. The term "GCF Interest Rate Mark" means, as regards a GCF Net Settlement Position, the sum of all the GCF Interest Rate Mark Payments on each of the GCF Repo Transactions that compose such position. Rule 1, *supra* note 4.

<sup>18</sup>No other components of funds-only settlement would be necessary to apply to Sponsored GC Trades because, as described above, (i) all Sponsored GC Trades would novate after the settlement of the Start Legs of such trades (*i.e.*, not during the Forward-Starting Period), (ii) mark-to-market changes in the value of the securities transferred under Sponsored GC Trades would be managed by the Sponsored GC Clearing Agent Bank on FICC's behalf (consistent with the manner in which GCF Repo Transactions are processed today), and (iii) the accrued repo interest on Sponsored GC Trades would be passed on a daily basis, as described above.

<sup>19</sup>Rule 3A, Section 14(c), *supra* note 4.

perform on behalf of its defaulted Sponsored Member.<sup>20</sup>

As a result, to the extent a Sponsoring Member either (1) runs a matched book of Sponsored Members (*i.e.*, enters into offsetting Sponsored Member Trades with its own Sponsored Members) or (2) simply enters into Sponsored Member Trades without entering into offsetting transactions, it does not increase FICC's liquidity risk. By contrast, if a Sponsoring Member enters into an offsetting Repo Transaction with a third-party Netting Member that is novated to FICC, then that will increase FICC's liquidity risk. This is because, unlike in the context of Sponsored Member Trades, in the event of the Sponsoring Member's default, FICC is required to settle with such third-party Netting Member.

Sponsored GC Trades would impact FICC's liquidity risk similarly to Sponsored Member Trades in the existing Service in this regard, in that liquidity risk to FICC would only be increased to the extent the Sponsoring Member enters into a Repo Transaction with a third-party Netting Member (which it may choose to do in order to offset the Sponsored GC Trade that it executed with its Sponsored Member). Accordingly, FICC proposes to manage the liquidity risk associated with Sponsored GC Trades in the same manner that it manages such risk for other Sponsored Member Trades. As discussed below in Item II(A)1(iii), FICC is proposing to add language to Rule 3A to revise the manner in which it calculates a Sponsoring Member's Individual Total Amount for purposes of its CCLF obligation, with respect to all Sponsored Member Trades, including Sponsored GC Trades, in order to reflect the fact that Sponsored Member Trades do not create liquidity risk.

### (C) Proposed Rule Changes

To effectuate the proposed changes described above, FICC would revise Rule 1 to add the following new defined terms: (1) GC Collateral Return Entitlement, (2) GC Collateral Return Obligation, (3) GC Comparable Securities, (4) GC Daily Repo Interest, (5) GC Funds Borrower, (6) GC Funds Lender, (7) GC Interest Rate Mark, (8) GC Repo Security, (9) GC Start Leg Market Value, (10) Purchased GC Repo Securities, (11) Sponsored GC Clearing Agent Bank, and (12) Sponsored GC Trade.

GC Collateral Return Entitlement would mean the entitlement of a Sponsoring Member or Sponsored

Member, as applicable, to receive the Purchased GC Repo Securities (as defined below) in exchange for cash at the End Leg of a Sponsored GC Trade.

GC Collateral Return Obligation would mean the obligation of a Sponsoring Member or Sponsored Member, as applicable, to deliver the Purchased GC Repo Securities in exchange for cash at the End Leg of a Sponsored GC Trade.

GC Comparable Securities would mean, in relation to a Sponsored GC Trade, any GC Repo Securities that are represented by the same Generic CUSIP Number as the GC Repo Securities that were transferred in the Start Leg of the Sponsored GC Trade, as set forth in the proposed new Schedule of GC Comparable Securities.

GC Daily Repo Interest would mean the daily interest amount that is payable under a Sponsored GC Trade.

GC Funds Borrower would mean a Sponsoring Member or Sponsored Member, as applicable, that has a GC Collateral Return Entitlement and associated cash payment obligation.

GC Funds Lender would mean a Sponsoring Member or Sponsored Member, as applicable, that has a GC Collateral Return Obligation and associated cash payment entitlement.

GC Interest Rate Mark would mean, on a particular Business Day as regards any Sponsored GC Trade where the End Leg is not scheduled to settle on that day, the product of the principal value of the Sponsored GC Trade on the Scheduled Settlement Date for its End Leg multiplied by a factor equal to the absolute difference between the System Repo Rate established by FICC for such Sponsored GC Trade and its Contract Repo Rate, and then multiplied by a fraction, the numerator of which is the number of calendar days from the current day until the Scheduled Settlement Date for the End Leg of the Sponsored GC Trade and the denominator of which is 360. If the Sponsored GC Trade's Contract Repo Rate is greater than its System Repo Rate, then the GC Interest Rate Mark would be a positive value for the GC Funds Lender, and a negative value for the GC Funds Borrower. If the Sponsored GC Trade's Contract Repo Rate is less than its System Repo Rate, then the GC Interest Rate Mark would be a positive value for the GC Funds Borrower, and a negative value for the GC Funds Lender.

GC Repo Security would mean an Eligible Security that is only eligible for submission to FICC in connection with the comparison and Novation of Sponsored GC Trades.

<sup>20</sup>Rule 3A, Section 11, *supra* note 4.

GC Start Leg Market Value would mean, in relation to a Sponsored GC Trade, the market value of the GC Repo Securities transferred in the Start Leg of the Sponsored GC Trade, measured as of the date of the settlement of the Start Leg of such Sponsored GC Trade.

Purchased GC Repo Securities would mean the GC Repo Securities transferred by the Sponsoring Member or Sponsored Member, as applicable, in settlement of the Start Leg of a Sponsored GC Trade, plus all cash and other GC Repo Securities transferred by such Sponsoring Member or Sponsored Member pursuant to proposed Sections 8(b)(ii) and 8(b)(v) of Rule 3A, less any GC Repo Securities or cash received by the Sponsoring Member or Sponsored Member pursuant to proposed Sections 8(b)(iii) and 8(b)(v) of Rule 3A.

Sponsored GC Clearing Agent Bank would mean a Clearing Agent Bank that has agreed to provide FICC, upon request, under mutually agreeable terms, with clearing services for Sponsored GC Trades.

Sponsored GC Trade would mean, in connection with the Sponsored GC Service, a Sponsored Member Trade that is a Repo Transaction between a Sponsored Member and its Sponsoring Member involving securities represented by a Generic CUSIP Number the data on which are submitted to FICC by the Sponsoring Member pursuant to the provisions of Rule 6A, for Novation to FICC pursuant to proposed Section 7(b)(ii) of Rule 3A.

FICC also proposes to revise the following defined terms in Rule 1: (1) Eligible Security, (2) End Leg, (3) General Collateral Repo Transaction, (4) Generic CUSIP Number, (5) Initial Haircut, (4) Interest Adjustment Payment, (5) Sponsored Member Trade, (6) Start Leg, (7) Forward Mark Adjustment Payment, and (8) Sponsoring Member Omnibus Account, each as described in greater detail below.

FICC proposes to revise the definition of Eligible Security to state that a GC Repo Security would be deemed to be an Eligible Security only in connection with a Sponsored GC Trade.

FICC also proposes to revise the definition of End Leg to include a definition applicable to Sponsored GC Trades. As regards a Sponsored GC Trade, End Leg would mean the concluding settlement aspects of the transaction, involving the retransfer of the Purchased GC Repo Securities by the GC Funds Lender and the taking back of such Purchased GC Repo Securities by the GC Funds Borrower. Because FICC is revising the definition of End Leg to add a definition

applicable to Sponsored GC Trades, FICC would also revise the first sentence of the current definition to state that it does not apply to Sponsored GC Trades by adding the phrase “or a Sponsored GC Trade” after “as regards a Repo Transaction other than a GCF Repo Transaction (or CCIT Transaction as applicable).”

FICC proposes to revise the definition of General Collateral Repo Transaction to state that General Collateral Repo Transaction would mean a Repo Transaction, other than a GCF Repo Transaction or Sponsored GC Trade (unless the context indicates otherwise), with a Generic CUSIP Number.

FICC also proposes to revise the definition of Generic CUSIP Number to state that FICC would use separate Generic CUSIP Numbers for General Collateral Repo Transactions, GCF Repo Transactions and Sponsored GC Trades.

FICC also proposes to revise the definition of Initial Haircut to include a definition applicable to Sponsored GC Trades. As regards any Sponsored GC Trade, Initial Haircut would mean any difference between (x) the Contract Value of the Start Leg of the Sponsored GC Trade and (y) the GC Start Leg Market Value. Because FICC is revising the definition of Initial Haircut to include a definition applicable to Sponsored GC Trades, FICC would revise proposed section (i) in the definition to state that proposed section (i) would apply to any Sponsored Member Trade that is not a Sponsored GC Trade by adding the phrase “that is not a Sponsored GC Trade” after “as regards any Sponsored Member Trade.”

FICC also proposes to revise the definition Interest Adjustment Payment to include a definition applicable to Sponsored GC Trades. As regards a Sponsored GC Trade, Interest Adjustment Payment would mean the product of the GC Interest Rate Mark multiplied by the applicable Overnight Investment Rate and then multiplied by a fraction, the numerator of which is the number of calendar days between the previous Business Day and the current Business Day and the denominator of which is 360.

FICC proposes to revise the definition of Sponsored Member Trade to include Sponsored GC Trades.

FICC also proposes to revise the definition of Start Leg to include a definition applicable to Sponsored GC Trades. As regards a Sponsored GC Trade, Start Leg would mean the initial settlement aspects of the Transaction, involving the transfer of GC Repo Securities by the Sponsoring Member or Sponsored Member, as applicable, that is the GC Funds Borrower and the

taking in of such GC Repo Securities by the Sponsoring Member or Sponsored Member, as applicable, that is the GC Funds Lender. Because FICC is proposing to revise the definition of Start Leg to add a definition applicable to Sponsored GC Trades, FICC would revise that the first sentence of the current definition to state that it does not apply to Sponsored GC Trades by adding the phrase “or a Sponsored GC Trade” after “as regards a Repo Transaction other than a GCF Repo Transaction.”

FICC also proposes to revise the definition of Forward Mark Adjustment Payment in Rule 1 to state that it would refer to the GC Interest Rate Mark with respect to Sponsored GC Trades.

FICC also proposes to make conforming changes to the definition of Sponsoring Member Omnibus Account to state that it may contain all types of Sponsored Member Trades. The current definition of Sponsoring Member Omnibus Account states that each Sponsoring Member Omnibus Account may contain activity within the meaning of clause (a) of the Sponsored Member Trade definition or activity within the meaning of clause (b) of such definition.

In addition, FICC proposes to revise the definition of Sponsored GC Service in Rule 1 and to revise Section VII (Sponsoring Members) of the Fee Structure, as described below.

FICC proposes to revise the definition of Sponsored GC Service in Rule 1 to state that it would mean the service offered by FICC to clear tri-party repurchase agreement transactions between Sponsoring Members and Sponsored Members, as described in Rule 3A. Currently, the definition of Sponsored GC Service states that it means a service to be offered by FICC, which has not yet been proposed for and would be subject to regulatory approval, to clear tri-party repurchase agreement transactions between the Sponsoring Members and Sponsored Members, as shall be described in Rule 3A. FICC also proposes to remove the footnote in the definition of Sponsored GC Service, which states that the Sponsored GC Service shall be the subject of a subsequent rule filing with the Commission and that the definition of Sponsored GC Service shall be revised upon approval of the subsequent rule filing, and at that time the footnote shall sunset.

FICC also proposes to revise Section VII (Sponsoring Members) of the Fee Structure to remove language that states that to the extent FICC, in consultation with its Board of Directors, does not implement the Sponsored GC Service, all previously collected Sponsored GC

Pre-Payment Assessments shall be returned to the contributing Sponsoring Members in full. FICC also proposes to remove the footnote in this section which states that the Sponsored GC Service shall be the subject of a subsequent rule filing with the Commission and that Section VII of the Fee Structure shall be revised to remove the referenced sentence upon approval of the subsequent rule filing, and at that time the footnote shall sunset.

In addition, FICC proposes to revise Rule 3A, Section 5 (Sponsored Member Trades) to state that this section does not apply to Sponsored GC Trades. Section 5 concerns the types of trades that may be submitted as Sponsored Member Trades and discusses the application of Rule 14 (Forward Trades) and Rule 18 (Special Provisions for Repo Transactions) to Sponsored Member Trades. The requirements that Sponsored GC Trades must meet would be separately enumerated in Section 7, and the provisions of Rules 14 and 18, which only apply to transactions eligible for FICC's general netting system, would not apply to such Sponsored GC Trades.

FICC also proposes to revise Rule 3A, Section 6 (Trade Submission and the Comparison System) to state that the current Schedule of Timeframes would apply to Sponsored Member Trades other than Sponsored GC Trades. The proposed new Schedule of Sponsored GC Trade Timeframes would apply to Sponsored GC Trades.

Section 7 (The Netting System, Novation and Guaranty of Settlement) of Rule 3A would be revised to create a proposed new paragraph (a). The proposed new paragraph (a) would provide that the current provisions of Section 7, which would be reorganized as proposed new subparagraphs (i) through (iv) of proposed new paragraph (a), apply to Sponsored Member Trades other than Sponsored GC Trades. These provisions concern the netting and Novation of Sponsored Member Trades. As discussed below, different provisions would apply to Sponsored GC Trades.

Proposed new paragraph (b) of Section 7 would only apply to Sponsored GC Trades. Proposed new subparagraph (i) of proposed new paragraph (b) of Section 7 would provide that only the End Legs of a Sponsored GC Trade may be novated to FICC and that a Sponsored GC Trade is permitted (but not required) to have an Initial Haircut. Proposed new subparagraph (ii) of proposed new paragraph (b) of Section 7 would provide requirements that would have to be satisfied in order for a Sponsored GC Trade to be novated on a given

Business Day. The following requirements would be included: (A) The trade data on the Sponsored GC Trade must have been submitted to FICC by the Sponsoring Member pursuant to Rule 6A by the deadline set forth in FICC's proposed new Schedule of Sponsored GC Trade Timeframes, (B) the data on the Sponsored GC Trade must have been compared in the Comparison System pursuant to Rule 6A, (C) the Start Leg of the Sponsored GC Trade must have fully settled at the Sponsored GC Clearing Agent Bank by the deadline set forth in FICC's proposed new Schedule of Sponsored GC Trade Timeframes, (D) the Sponsored GC Clearing Agent Bank must have, pursuant to communication links, formats, timeframes, and deadlines established by FICC for such purpose, provided to FICC a report containing such data as FICC may require from time to time, including information regarding the specific GC Repo Securities that were delivered in settlement of the Start Leg of the Sponsored GC Trade, and (E) FICC must determine that the data contained in such report matches the data on the Sponsored GC Trade submitted by the Sponsoring Member pursuant to Rule 6A. Proposed new subparagraph (iii) of proposed new paragraph (b) of Section 7 would state that, on each Business Day, FICC would provide each Sponsoring Member with one or more Reports setting forth (A) each Sponsored GC Trade, the data on which has been compared in the Comparison System and (B) each Sponsored GC Trade, the End Leg of which has been novated to FICC. Proposed new subparagraph (iv) of proposed new paragraph (b) of Section 7 would require that each Sponsoring Member and Sponsored Member acknowledges and agrees that it has authorized each relevant Sponsored GC Clearing Agent Bank to provide FICC with all information and data as FICC may require or request from time to time in order to novate and process Sponsored GC Trades.

Section 8 (Securities Settlement) of Rule 3A would be revised to create a new paragraph (a). The proposed new paragraph (a) would provide that the bulk of the current provisions of Section 8, which would be reorganized as subparagraphs (i) through (vii) of proposed new paragraph (a), apply to Sponsored Member Trades other than Sponsored GC Trades. Those provisions concern the process for settling Sponsored Member Trades. As discussed below, different settlement requirements would apply to Sponsored GC Trades.

Proposed new paragraph (b) of Section 8 would apply only to Sponsored GC Trades. Proposed new subparagraph (i) of proposed new paragraph (b) of Section 8 would state that GC Collateral Return Obligations and cash payment obligations associated with GC Collateral Return Entitlements must be satisfied by a GC Funds Lender and GC Funds Borrower, respectively, within the timeframes established for such by FICC in the proposed new Schedule of Sponsored GC Trade Timeframes. In addition, any failure by the GC Funds Borrower to satisfy its cash payment obligations associated with GC Collateral Return Entitlements within the timeframe established for such by FICC in the proposed new Schedule of Sponsored GC Trade Timeframes would subject the GC Funds Borrower to a late fee as if such GC Funds Borrower were a Net Funds Payor within the meaning of Section IX of the Fee Structure (Late Fee Related to GCF Repo Transactions). Proposed new subparagraph (ii) of proposed new paragraph (b) of Section 8 would state that if on any Business Day, the market value of a GC Funds Borrower's GC Collateral Return Entitlement from the previous Business Day (or the current Business Day) is less than the GC Start Leg Market Value, then such GC Funds Borrower would deliver to FICC (and FICC would deliver to the relevant GC Funds Lender) additional GC Comparable Securities and/or cash, such that the market value of the GC Funds Borrower's GC Collateral Return Entitlement (and the market value of the relevant GC Funds Lender's GC Collateral Return Obligation) is at least equal to the GC Start Leg Market Value. Such additional securities and/or cash must be delivered by the GC Funds Borrower within the timeframe set forth in the proposed new Schedule of Sponsored GC Trade Timeframes. Proposed new subparagraph (iii) of proposed new paragraph (b) of Section 8 would state that if on any Business Day, the market value of a GC Funds Lender's GC Collateral Return Obligation from the previous Business Day (or the current Business Day) is greater than the GC Start Leg Market Value, then such GC Funds Lender would deliver to FICC (and FICC would deliver to the relevant GC Funds Borrower) some of the Purchased GC Repo Securities, such that the market value of the GC Funds Lender's GC Collateral Return Obligation (and the market value of the relevant GC Funds Borrower's Collateral Return Entitlement) is at least equal to the GC Start Leg Market Value. Such Purchased

GC Repo Securities must be delivered within the timeframe set forth in the proposed new Schedule of Sponsored GC Trade Timeframes. Proposed new subparagraph (iv) of proposed new paragraph (b) of Section 8 would state that each GC Funds Borrower (or if the repo rate for the relevant Sponsored GC Trade is negative, the GC Funds Lender) would, within the timeframe set forth in the proposed new Schedule of Sponsored GC Trade Timeframes, pay the daily accrued GC Daily Repo Interest to FICC (and FICC would pay such GC Daily Repo Interest to the GC Funds Lender or GC Funds Borrower, as applicable). Proposed new subparagraph (v) of proposed new paragraph (b) of Section 8 would state that a GC Funds Borrower may substitute cash and/or GC Comparable Securities for any Purchased GC Repo Securities in accordance with the timeframe set forth in the proposed new Schedule of Sponsored GC Trade Timeframes. Proposed new subparagraph (vi) of proposed new paragraph (b) of Section 8 would state that FICC directs each Sponsored Member and Sponsoring Member to satisfy any payment or delivery obligation due to FICC, except for any obligation to pay a Funds-Only Settlement Amount, by making the relevant payment or delivery to an account at the relevant Sponsored GC Clearing Agent Bank specified by the pre-Novation counterparty to the Sponsored Member or Sponsoring Member, as applicable, in accordance with such procedures as the Sponsored GC Clearing Agent Bank may specify from time to time. Each Sponsored Member and Sponsoring Member that is owed any such payment or delivery from FICC would acknowledge and agree that, if the pre-Novation counterparty to such Sponsored GC Trade makes the relevant payment or delivery as described in the prior sentence, FICC's obligation to make such payment or delivery would be discharged and satisfied in full. Proposed new subparagraph (vii) of proposed new paragraph (b) of Section 8 would state that the market value of all GC Repo Securities would be determined by the relevant Sponsored GC Clearing Agent Bank each Business Day.

In addition, FICC proposes to move language from current Section 8(a) to proposed new Section 8(c). Proposed new Section 8(c) would state that notwithstanding the foregoing and any other activities the Sponsoring Member may perform in its capacity as agent for Sponsored Members, each Sponsored Member would be principally obligated

to FICC with respect to all securities settlement obligations under the Rules, and the Sponsoring Member would not be a principal under the Rules with respect to the settlement obligations of its Sponsored Members. This provision would apply to both Sponsored GC Trades as well as other kinds of Sponsored Member Trades.

FICC also proposes to revise Section 9 of Rule 3A to state which provisions would apply to Sponsored Member Trades other than Sponsored GC Trades, which provisions would apply only to Sponsored GC Trades, and which provisions would apply to all Sponsored Member Trades. Specifically, FICC proposes to add language to state that Section 9(a) applies to Sponsored Member Trades other than Sponsored GC Trades and current Sections 9(b), (c), (d), and (e), which would be reorganized as proposed new Sections 9(c)(i), (c)(ii), (c)(iii), and (c)(iv), respectively, applies to all Sponsored Member Trades. In addition, FICC proposes to add a new Section 9(b) to Rule 3A, which would only apply to Sponsored GC Trades and would state that each Sponsoring Member and Sponsored Member would be obligated to pay to FICC, and/or would be entitled to receive from FICC, the following amounts: Forward Mark Adjustment Payment and Interest Adjustment Payment. It would also state that such amounts would be payable and receivable as though they were amounts described in Rule 13.

FICC proposes to add Section 10(i) to Rule 3A that would state that for purposes of applying Rule 4 to a Sponsoring Member Omnibus Account, each Sponsored GC Trade would be treated as a GCF Repo Transaction, each GC Funds Lender and GC Funds Borrower would be treated as a GCF Counterparty, and each Sponsored GC Clearing Agent Bank would be treated as a GCF Clearing Agent Bank.

FICC would also revise Section 4 of Rule 5 (Comparison System) to add Sponsored GC Trades. Specifically, Section 4 of Rule 5 would be revised to state that GCF Repo Transactions and Sponsored GC Trades must be submitted exactly as executed.

FICC is also proposing to add a new Schedule of Sponsored GC Trade Timeframes that would only be applicable to Sponsored GC Trades. The proposed new Schedule of Sponsored GC Trade Timeframes would state that the time during which reports would be made available with respect to end of day Clearing Fund requirements and funds-only settlement requirements would be from 10:30 p.m. to 2:00 a.m. In addition, it would state that 2:00 p.m. would be the time during which reports

would be made available with respect to intraday Clearing Fund requirements, and intraday funds-only settlement requirements. The proposed new Schedule of Sponsored GC Trade Timeframes would also state that at 10:00 a.m., funds-only settlement debits and credits are executed via the Federal Reserve's National Settlement Service and at 4:30 p.m., the intraday funds-only settlement debits and credits are executed via the Federal Reserve's National Settlement Service.

The proposed new Schedule of Sponsored GC Trade Timeframes would also state that 9:00 a.m. would be the deadline for the GC Funds Borrower to satisfy the obligation described in proposed Section 8(b)(ii) of Rule 3A in accordance with the provisions of proposed Section 8(b)(vi) of Rule 3A. It would also state that FICC reserves the right to also require a GC Funds Borrower to satisfy the obligation described in proposed Section 8(b)(ii) on an intraday basis based on the market value of the applicable GC Repo Securities as determined by the GC Clearing Agent Bank in accordance with proposed Section 8(b)(vii) of Rule 3A. It would also state that 12:00 p.m. would be the deadline for the GC Funds Borrower (or if the repo rate for the relevant Sponsored GC Trade is negative, the GC Funds Lender) to pay to FICC the accrued GC Daily Repo Interest as described in proposed Section 8(b)(iv) in accordance with the provisions of proposed Section 8(b)(vi) of Rule 3A (unless the End Leg of the related Sponsored GC Trade is due to settle on the same day). The proposed new Schedule of Sponsored GC Timeframes would state that any accrued GC Daily Repo Interest that is due on the settlement day of the End Leg of the related Sponsored GC Trade would be paid in connection with the settlement of the End Leg.

The proposed new Schedule of Sponsored GC Trade Timeframes would also state that 5:00 p.m. would be the deadline for final input by the Sponsoring Members to FICC of Sponsored GC Trade data. Furthermore, 5:30 p.m. would be the deadline for (i) full settlement of the Start Leg of the Sponsored GC Trade in accordance with proposed Section 7(b)(ii)(C) of Rule 3A, (ii) substitutions of Purchased GC Repo Securities in accordance with proposed Section 8(b)(v) of Rule 3A, and (iii) satisfaction of GC Collateral Return Obligations and cash payment obligations associated with GC Collateral Return Entitlements by GC Funds Lenders and GC Funds Borrowers, respectively, in accordance

with proposed Section 8(b)(i) of Rule 3A.

The proposed new Schedule of Sponsored GC Trade Timeframes would also state that the time by which a GC Funds Lender would be required to deliver any securities to a GC Funds Borrower in connection with proposed Section 8(b)(iii) of Rule 3A would be determined by the relevant Sponsored GC Clearing Agent Bank. Furthermore, it would state that all times may be extended as needed by FICC to (i) address operational or other delays that would reasonably prevent members or FICC from meeting the deadline or timeframe, as applicable, or (ii) allow the FICC time to operationally exercise its existing rights under the Rules. In addition, it would state that times applicable to FICC are standards and not deadlines and that actual processing times may vary slightly, as necessary.

FICC also proposes to revise the Schedule for the Deletion of Trade Data to state which provisions would not apply to Sponsored GC Trades. In addition, FICC would also add language to state that trade data on Sponsored GC Trades that remain uncollected on a given Business Day would pend in the Comparison System until FICC's deadline for final input by Sponsoring Members of Sponsored GC Trade data (as provided in the Schedule of Sponsored GC Trade Timeframes) on such Business Day. FICC would also add language to state that trade data on Sponsored GC Trades, which have been compared in the Comparison System pursuant to Rule 6A but the Start Legs of which have not fully settled at a Sponsored GC Clearing Agent Bank by the deadline set forth in FICC's proposed new Schedule of Sponsored GC Trade Timeframes, would be deleted from the Comparison System during the same processing cycle as the Repo Start Date for such Sponsored GC Trades.

FICC also proposes to revise the Schedule of Required Data Submission Items to state that items (1) and (2) in this schedule would not be required for Sponsored Member Trades.

FICC also proposes to revise the following schedules to exclude Sponsored GC Trades: (i) Schedule of Required and Accepted Data Submission Items for a Substitution and (ii) Schedule of Required and Accepted Data Submission Items for New Securities Collateral.

In addition, as described above, FICC would add a proposed new Schedule of GC Comparable Securities.

(iii) Add Language to Rule 3A To Allow FICC To Recognize, for CCLF Calculation Purposes, Any Offsetting Settlement Obligations as Between a Sponsoring Member's Netting Account and Its Sponsoring Member Omnibus Account To Ensure That a Sponsoring Member's CCLF Obligation Is Calculated in a Manner That More Closely Aligns With the Liquidity Risk Associated With Sponsored Member Trades

As described above, Sponsored Member Trades between a Sponsoring Member and its Sponsored Member in the existing Service do not independently create liquidity risk for FICC. This is because FICC is not required to complete settlement of such Sponsored Member Trades in the event that either the Sponsoring Member or Sponsored Member defaults. In the event that the Sponsoring Member defaults, Section 14(c) of Rule 3A permits FICC to close out (rather than settle) the Sponsored Member Trades of the defaulter's Sponsored Members.<sup>21</sup> Likewise, if the Sponsored Member defaults, FICC is also not required to complete settlement. Rather, under Section 11 of Rule 3A, FICC may offset its settlement obligations to the Sponsoring Member against the Sponsoring Member's obligations under the Sponsoring Member Guaranty to perform on behalf of its defaulted Sponsored Member.<sup>22</sup>

Accordingly, liquidity risk to FICC is only increased to the extent the Sponsoring Member enters into a Repo Transaction with a third-party Netting Member that is novated to FICC. Such a Repo Transaction creates liquidity risk to FICC because, in the event of the Sponsoring Member's default, FICC is required to settle with such third-party Netting Member.<sup>23</sup>

In light of this, FICC believes that a Sponsored Member Trade should only increase the obligation of a Sponsoring Member with respect to FICC's CCLF to the extent the Sponsoring Member offsets that trade with a Repo Transaction entered into with a third-party Netting Member that is novated to FICC. To the extent a Sponsoring Member either (1) enters into an offsetting Sponsored Member Trade with another Sponsored Member (*i.e.*, it runs a matched book of Sponsored Member Trades) or (2) simply does not

<sup>21</sup> Rule 3A, Section 14(c), *supra* note 4.

<sup>22</sup> Rule 3A, Section 11, *supra* note 4.

<sup>23</sup> As described above, a Sponsored GC Trade would impact FICC's liquidity risk similarly to a Sponsored Member Trade in the existing Service in this regard, in that liquidity risk to FICC would only be increased to the extent the Sponsoring Member enters into an offsetting Repo Transaction with a third-party Netting Member that is novated to FICC.

enter into an offsetting transaction at all, then the Sponsored Member Trade has no effect on FICC's liquidity risk, and so should not affect the Sponsoring Member's CCLF obligation.

Currently, FICC does not impose a CCLF obligation on a Sponsoring Member to the extent the Sponsoring Member runs a matched book of Sponsored Member Trades. This is because FICC calculates a Sponsoring Member's CCLF obligation based on the net settlement obligations of its Sponsoring Member Omnibus Account and the net settlement obligations of the Sponsoring Member's netting account.<sup>24</sup> In other words, FICC nets all of the positions recorded in the Sponsoring Member's Sponsoring Member Omnibus Account, regardless of whether they relate to the same Sponsored Member, and separately nets all of the positions in Sponsoring Member's netting account. As a result, to the extent a Sponsoring Member enters into perfectly offsetting Sponsored Member Trades, the settlement obligations of those trades will net out in the Sponsoring Member Omnibus Account and in the netting account and thereby create no CCLF obligation for the Sponsoring Member.

However, currently, if a Sponsoring Member enters into a Sponsored Member Trade without entering into an offsetting transaction, it is subject to CCLF obligations for the position of its Sponsored Member recorded in its Sponsoring Member Omnibus Account as well as its own position arising from the Sponsored Member Trade recorded in its netting account. This is because, although the positions in the Sponsoring Member Omnibus Account and netting account arising from such Sponsored Member Trade are perfectly offsetting, FICC does not currently net them against each other for CCLF purposes due to the current CCLF allocation being calculated at the participant account level.<sup>25</sup>

<sup>24</sup> See Rule 3A, Section 8(b) and Rule 22A, Section 2a(b), *supra* note 4.

<sup>25</sup> Consider the following example: A Sponsoring Member sells 100 shares of CUSIP 123 to a Sponsored Member in a Repo Transaction. That transaction will result in the Sponsoring Member's netting account being long 100 shares of CUSIP 123 and the Sponsoring Member's Sponsoring Member Omnibus Account being short 100 shares of CUSIP 123. Under the existing Rules, the Sponsoring Member will have a CCLF obligation for both the long position in the netting account as well as the short position in the Sponsoring Member Omnibus Account even though, as described above, the Sponsored Member Trade does not independently create liquidity risk for FICC.

Although this limitation on offset is consistent with FICC's approach of not offsetting the positions of two accounts of the same Member for CCLF purposes, there is an important difference between

In order to ensure that a Sponsoring Member's CCLF obligation is calculated in a manner that more closely aligns with the liquidity risk associated with Sponsored Member Trades, FICC proposes to add language to Rule 3A to allow it to recognize, for CCLF calculation purposes, any offsetting settlement obligations as between a Sponsoring Member's netting account and its Sponsoring Member Omnibus Account. This proposed change would ensure that all Sponsored Member Trades, whether perfectly offset by other Sponsored Member Trades or not, would be recognized for CCLF purposes as not affecting FICC's liquidity risk. With respect to Sponsored GC Trades in particular, this proposed change would ensure that FICC applies an appropriate CCLF obligation to a Sponsoring Member in the event a Sponsored GC Clearing Agent Bank allocates to a Sponsored GC Trade a different security than the security that underlies an offsetting Sponsored Member Trade.<sup>26</sup>

Specifically, FICC proposes to add new Section 8(d) to Rule 3A, which would state that FICC, when calculating Individual Total Amounts<sup>27</sup> for a Sponsoring Member, may net any offsetting settlement obligations across the Sponsoring Member's proprietary positions and the positions of its

Sponsored Member Trades and other FICC repo activity. As discussed above, the Service requires that a Sponsoring Member have a Sponsoring Member Omnibus Account that is separate from its netting account. For all other repo activity, the Member has the option to collapse all of its activity into a single participant account in order to achieve a similar netting benefit. Sponsoring Members do not have that option with respect to their Sponsored Member Trades, so FICC believes this proposed change is necessary to ensure that a Sponsoring Member's CCLF obligations are calculated in a manner that more closely aligns with the liquidity risk associated with Sponsored Member Trades.

<sup>26</sup> For example, a Sponsoring Member may enter into a Sponsored GC Trade on a Generic CUSIP Number and an offsetting Sponsored Member Trade in a specific CUSIP Number (e.g., CUSIP 123). Although CUSIP 123 may be an eligible security under the Generic CUSIP Number underlying the Sponsored GC Trade, the Sponsored GC Clearing Agent Bank may allocate to the Sponsored GC Trade a different eligible CUSIP Number (e.g., CUSIP 456) from the securities eligibility schedule. In that situation, the CUSIP 123 and CUSIP 456 positions in the Sponsoring Member's netting account and the Sponsoring Member Omnibus Account would not offset within the respective account, but the proposed change to Section 8(d) of Rule 3A would allow FICC to offset the CUSIP 123 and CUSIP 456 positions across the Sponsoring Member's netting account and Sponsoring Member Omnibus Account to ensure that the CCLF obligation applicable to the Sponsoring Member accurately reflects the liquidity risk that its positions create.

<sup>27</sup> The Individual Total Amount dictates the maximum amount of liquidity a Member must provide under FICC's CCLF. See Rule 22A, Section 2a(b), *supra* note 4.

Sponsored Members in its Sponsoring Member Omnibus Account(s).

#### Expected Member Impact

FICC has conducted a study for the period from January 1, 2021 to March 30, 2021 as to the impact on FICC/GSD Netting Members' CCLF allocations as a result of recognizing offset between positions in a Sponsoring Member's netting account and its Sponsoring Member Omnibus Account. The impact of recognition of the offsetting positions as between a Sponsoring Member's netting account and its Sponsoring Member Omnibus Account relates strictly to the allocation of the total CCLF facility amongst the FICC/GSD netting membership, with certain Sponsoring Members receiving less allocation of CCLF once the offsets between the Sponsoring Member's netting account and the Sponsoring Member Omnibus Account are recognized.

(iv) Remove the Requirement from Section 2 of Rule 3A That a Sponsoring Member Provide a Quarterly Representation to FICC That Each of Its Sponsored Members Is a "Qualified Institutional Buyer" as Defined in Rule 144A, or Is a Legal Entity That, Although Not Organized as an Entity Specifically Listed in Paragraph (a)(1)(i) of Rule 144A, Satisfies the Financial Requirements Necessary To Be a "Qualified Institutional Buyer" as Specified in That Paragraph

FICC also proposes to remove the requirement from Section 2 of Rule 3A that a Sponsoring Member provide to FICC a quarterly representation that each of its Sponsored Members is a "qualified institutional buyer" as defined in Rule 144A, or is a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i) of Rule 144A, satisfies the financial requirements necessary to be a "qualified institutional buyer" as specified in that paragraph.<sup>28</sup> FICC proposes to remove this requirement because Section 3(d) of Rule 3A separately requires a Sponsoring Member to notify FICC if its Sponsored Member is no longer either a "qualified institutional buyer" as defined in Rule 144A, or a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i) of Rule 144A, satisfies the financial requirements necessary to be a "qualified institutional buyer" as specified in that paragraph.<sup>29</sup> As such, FICC views the quarterly representation requirement in Section 2

of Rule 3A to be an overlapping and redundant requirement that creates administrative burdens for FICC and for its Sponsoring Members that are, in FICC's view, unnecessary.

To effectuate the proposed changes described above, FICC would revise Rule 3A to remove Section 2(d).

#### (v) A Clarification, Certain Corrections, and Certain Technical Changes

FICC proposes to make a clarification to the Rules. Specifically, in the definition of Initial Haircut, FICC proposes to add the phrase ", if any," after "absolute value of the dollar difference."

FICC also proposes to make certain corrections to the Rules.

First, FICC proposes to correct the definition of Initial Haircut in Rule 1 so that it would be defined, with respect to Sponsored Member Trades that are not Sponsored GC Trades, as the absolute dollar difference between the Market Value of the Sponsored Member Trade, as of the settlement date of the Start Leg, and the Contract Value of the Start Leg of the Sponsored Member Trade, instead of the Contract Value of the Close Leg (as is currently provided).

Second, FICC proposes to correct the reference in Rule 3A, Section 3(a)(ii)(B) to paragraph (a)(1)(i)(H) of Rule 144A instead of paragraph (a)(1)(i) of Rule 144A (as is currently provided).

Third, FICC also proposes to correct a typographical error in Section VII (Fee Structure) by revising from the reference to Additional Sponsored GC Credit instead of Additional Sponsored GC Assessment (as is currently provided).

FICC also proposes to make certain technical changes, such as numbering and renumbering sections and making conforming grammatical changes.

For example, because FICC is removing Section 2(d) of Rule 3A, FICC proposes to renumber the subsequent subsections in Rule 3A, Section 2. Specifically, FICC proposes to renumber current Sections 2(e), 2(f), 2(g), 2(h), 2(i), and 2(j) as Sections 2(d), 2(e), 2(f), 2(g), 2(h), and 2(i), respectively.

In addition, Section 7 of Rule 3A, in connection with FICC's creation of a proposed new paragraph (a) as described above, FICC proposes to renumber current Sections 7(a), 7(b), 7(c) and 7(d) as new Sections 7(a)(i), 7(a)(ii), 7(a)(iii) and 7(a)(iv), respectively. In addition, in current Sections 8(b) and 8(c), FICC proposes to revise the references from Section 7 to Section 7(a) to reflect the proposed renumbering of Section 7 described above.

Likewise, in Section 8 of Rule 3A, in connection with FICC's creation of a

<sup>28</sup> Rule 3A, Section 2(d), *supra* note 4.

<sup>29</sup> Rule 3A, Section 3(d), *supra* note 4.

proposed new paragraph (a) as described above, FICC proposes to renumber current Sections 8(a), 8(b), 8(c), 8(d), 8(e), 8(f) and 8(g) as new Sections 8(a)(i), 8(a)(ii), 8(a)(iii), 8(a)(iv), 8(a)(v), 8(a)(vi), and 8(a)(vii), respectively. In addition, in current Section 8(a), FICC proposes to revise the reference from Section 8(c) to Section 8(a)(iii) to reflect the proposed renumbering of Section 8 described above. In current Section 8(f), FICC also proposes to revise the reference from subsection (b) to subsection (a)(ii) to reflect the proposed renumbering of Section 8 described above.

In addition, in current Section 9 of Rule 3A, in connection with FICC's addition of proposed new paragraph (b) as described above, FICC proposes to renumber current Sections 9(b), 9(c), 9(d) and 9(e) as new Sections 9(c)(i), 9(c)(ii), 9(c)(iii) and 9(c)(iv), respectively.

Because FICC is adding Sponsored GC Trades to the definition of Sponsored Member Trade as described above, FICC would create new sections (a) and (b) and renumber current sections (a) and (b) as subsections (i) and (ii) of new section (a). FICC would also revise the definition of Same-Day Settling Trade and current Section 8(c) and Section 18(a) of Rule 3A to reflect the proposed changes to the Sponsored Member Trade definition.

In addition, in the definition of Initial Haircut, FICC is proposing to add section numbers (i) and (ii) to make it clear that proposed section (i) of the definition would apply to any Sponsored Member Trade that is not a Sponsored GC Trade and proposed section (ii) would apply to any Sponsored Member Trade.

In addition, FICC would also make certain conforming grammatical changes. For example, FICC would add a comma and move the word "and" in the definition of Generic CUSIP Number to reflect the addition of Sponsored GC Trades. Similarly, in each of the (i) Schedule of Required and Accepted Data Submission Items for a Substitution and (ii) Schedule of Required and Accepted Data Submission Items for New Securities Collateral, FICC would also add a comma and move the word "and" as conforming grammatical changes. As another example, FICC would also add the word "or" in the definition of Sponsored Member Trade to reflect the addition of Sponsored GC Trades. In the definition of Initial Haircut, FICC would also add the word "and" to reflect the addition of proposed section (ii). As another example, in Section 18(a) of Rule 3A, FICC would revise the

reference from subsection to subsections to reflect the proposed changes to the definition of Sponsored Member Trades described above.

## 2. Statutory Basis

FICC believes these proposed changes are consistent with the requirements of the Act, and the rules and regulations applicable to a registered clearing agency. Specifically, FICC believes that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act,<sup>30</sup> and Rule 17Ad-22(e)(7),<sup>31</sup> Rule 17Ad-22(e)(18),<sup>32</sup> and Rule 17Ad-22(e)(21)(i),<sup>33</sup> as promulgated under the Act, for the reasons stated below.

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to (i) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, (ii) promote the prompt and accurate clearance and settlement of securities transactions, and (iii) in general, to protect investors and the public interest.<sup>34</sup>

FICC believes that the proposed changes described in Item II(A)1(ii) above, *i.e.*, to add the Sponsored GC Service, are designed to remove certain impediments to and perfect the mechanism of a national settlement system for the prompt and accurate clearance and settlement of securities transactions. This is because the Sponsored GC Service would allow Sponsoring Members and their Sponsored Member clients to submit for clearing Repo Transactions that settle on a tri-party repo platform of a Sponsored GC Clearing Agent Bank in a manner consistent with the way Sponsoring Members and their Sponsored Member clients settle tri-party repo transactions outside of central clearing. In particular, as described above, the existing Service's requirement that Sponsored Member Trades be margined exclusively in cash through FICC's funds-only settlement process is currently an impediment that discourages term repo activity through the Service because money market funds and other mutual funds are not generally operationally equipped to provide or receive cash margin in connection with their term repo activity (either bilaterally or in central clearing). As such, FICC believes that adding the Sponsored GC Service would make it more operationally efficient for Sponsoring Members and

their Sponsored Members that are money market funds and other mutual funds to transact Repo Transactions (particularly term Repo Transactions) with each other through FICC, and thereby, remove the impediment, consistent with Section 17A(b)(3)(F) of the Act.<sup>35</sup>

FICC also believes the proposed changes described in Item II(A)1(ii) above, *i.e.*, to add the Sponsored GC Service, are designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.<sup>36</sup> By allowing Sponsoring Members and Sponsored Member clients to submit for clearing Repo Transactions that settle on the tri-party repo platform of a Sponsored GC Clearing Agent Bank in a manner consistent with the way Sponsoring Members and their Sponsored Member clients settle tri-party repo transactions outside of central clearing today, FICC believes the proposed changes would enable Sponsoring Members to submit a greater number of securities transactions to be cleared and settled by FICC. In particular, FICC believes Sponsoring Members would be able to submit to FICC more term Repo Transactions. FICC's clearance and settlement of such term Repo Transactions would promote the prompt and accurate clearance and settlement of securities transactions by increasing the number of transactions subject to FICC's risk management and guaranty of settlement. Therefore, FICC believes that the proposed changes described in Item II(A)1(ii) above are designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.<sup>37</sup>

FICC also believes that the proposed changes described in Item II(A)1(iii) above, *i.e.*, to add language to Rule 3A to enable FICC to recognize, for CCLF calculation purposes, any offsetting settlement obligations as between a Sponsoring Member's netting account and its Sponsoring Member Omnibus Account, are designed to remove certain impediments to and perfect the mechanism of a national settlement system for the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.<sup>38</sup> Currently, as described above, if a Sponsoring Member enters into a Sponsored Member Trade that is not perfectly offset by another Sponsored Member

<sup>30</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>31</sup> 17 CFR 240.17Ad-22(e)(7).

<sup>32</sup> 17 CFR 240.17Ad-22(e)(18).

<sup>33</sup> 17 CFR 240.17Ad-22(e)(21)(i).

<sup>34</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

Trade, it is subject to a CCLF obligation for its positions that is in excess of the liquidity risk its positions generate. FICC believes that this approach to CCLF calculations unnecessarily increases the costs for Sponsoring Members and therefore, may be an impediment that discourages the submission of Sponsored Member Trades to FICC. With this proposed change, FICC would be able to calculate a Sponsoring Member's CCLF obligation in a manner that more closely aligns with the liquidity risk associated with Sponsored Member Trades and thereby removes the aforementioned impediment. As such, FICC believes the proposed changes described in Item II(A)1(iii) above are designed to remove certain impediments to and perfect the mechanism of a national settlement system for the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.<sup>39</sup>

FICC also believes that the proposed changes described in Item II(A)1(iii) above, *i.e.*, to add language to Rule 3A to enable FICC to recognize, for CCLF calculation purposes, any offsetting settlement obligations as between a Sponsoring Member's netting account and its Sponsoring Member Omnibus Account, are designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.<sup>40</sup> As described above, if a Sponsoring Member enters into a Sponsored Member Trade without another offsetting Sponsored Member Trade, it is subject to a CCLF obligation for its positions that is in excess of the liquidity risk that its positions generate. With this proposed change, FICC would be able to calculate a Sponsoring Member's CCLF obligation in a manner that more closely aligns with the liquidity risk associated with Sponsored Member Trades and thereby reduce unnecessary costs. FICC believes that reducing unnecessary costs could encourage Sponsoring Members to submit a greater number of securities transactions to be cleared and settled by FICC. FICC's clearance and settlement of a greater number of securities transactions would promote the prompt and accurate clearance and settlement of securities transactions by increasing the number of transactions subject to FICC's risk management and guaranty of settlement. Therefore, FICC believes that the proposed changes described in Item II(A)1(iii) above are designed to promote the prompt and accurate clearance and

settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.<sup>41</sup>

FICC believes the proposed changes described in Item II(A)1(iv) above, *i.e.*, to remove the requirement from Section 2 of Rule 3A that a Sponsoring Member provide a quarterly representation to FICC that each of its Sponsored Members is a "qualified institutional buyer" as defined in Rule 144A, or is a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i) of Rule 144A, satisfies the financial requirements necessary to be a "qualified institutional buyer" as specified in that paragraph, are designed, in general, to protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act.<sup>42</sup> FICC believes the administrative burdens created for FICC and the Sponsoring Members by the quarterly representation requirement in Section 2 of Rule 3A is unnecessary because it is an overlapping and redundant requirement and does not add any substantive benefit. As described above, Section 3(d) of Rule 3A separately requires a Sponsoring Member to notify FICC if its Sponsored Member is no longer either a "qualified institutional buyer" as defined in Rule 144A, or a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i) of Rule 144A, satisfies the financial requirements necessary to be a "qualified institutional buyer" as specified in that paragraph.<sup>43</sup> As such, FICC believes that removing this overlapping and redundant quarterly representation requirement would facilitate the effective and efficient operation of FICC and the Service and therefore, would enable FICC to better serve its Sponsoring Members. Furthermore, with these proposed changes, there would be a clear and singular mechanism for Sponsoring Members to notify FICC of a Sponsored Member's failure to satisfy the above-described requirement (as opposed to having overlapping and redundant requirements that could cause confusion). FICC believes this proposed change would enhance clarity and therefore, may enhance compliance by the Sponsoring Members with the requirement to notify FICC if a Sponsored Member is no longer either a "qualified institutional buyer" as defined in Rule 144A, or a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i) of Rule 144A, satisfies the financial

requirements necessary to be a "qualified institutional buyer" as specified in that paragraph. Therefore, FICC believes that the proposed changes described in Item II(A)1(iv) above, are designed, in general, to protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act.<sup>44</sup>

FICC believes the proposed clarification, corrections, and technical changes described in Item II(A)1(v) above are also designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act, by enhancing clarity and transparency regarding the Service.<sup>45</sup> Having transparent and clear provisions regarding the Service would enable Members to better understand the operation of the Service and would provide Members with increased predictability and certainty regarding their rights and obligations. FICC believes that this predictability and certainty regarding their rights and obligations may encourage Sponsoring Members to submit a greater number of securities transactions to be cleared and settled by FICC. FICC's clearance and settlement of such securities transactions would promote the prompt and accurate clearance and settlement of securities transactions by increasing the number of transactions subject to FICC's risk management and guaranty of settlement. Therefore, FICC believes the proposed clarification, corrections, and technical changes described in Item II(A)1(v) above are designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.<sup>46</sup>

Rule 17Ad-22(e)(7) under the Act requires FICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.<sup>47</sup> FICC believes that the proposed changes described in Item II(A)1(iii) above are consistent with Rule 17Ad-22(e)(7) because, as described above, all Sponsored Member Trades (including Sponsored Member Trades in the existing Service and Sponsored GC Trades in the proposed Sponsored GC Service) do not independently create a

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Rule 3A, Section 3(d), *supra* note 4.

<sup>44</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> 17 CFR 240.17Ad-22(e)(7).

liquidity risk. FICC believes the proposed changes described in Item II(A)1(iii) above would allow FICC to calculate a Sponsoring Member's CCLF obligation in a manner that more closely aligns with the liquidity risk associated with Sponsored Member Trades. As such, FICC believes that the proposed changes described in Item II(A)1(iii) above are reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity, consistent with Rule 17Ad-22(e)(7).<sup>48</sup>

Rule 17Ad-22(e)(18) under the Act requires FICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct, and where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.<sup>49</sup> FICC believes that the proposed changes described in Item II(A)1(iv) above would enhance clarity and therefore, may enhance compliance by the Sponsoring Members with the requirement to notify FICC if a Sponsored Member is no longer either a "qualified institutional buyer" as defined in Rule 144A, or a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i) of Rule 144A, satisfies the financial requirements necessary to be a "qualified institutional buyer" as specified in that paragraph. As described above, this requirement is set forth in Section 3(d) of Rule 3A.<sup>50</sup> With these proposed changes, there would be a clear and singular mechanism for Sponsoring Members to notify FICC of a Sponsored Member's failure to satisfy the above-described requirement (as opposed to having overlapping and redundant requirements that could cause confusion). Therefore, FICC believes the proposed changes described in Item II(A)1(iv) above are consistent with Rule 17Ad-22(e)(18).<sup>51</sup>

<sup>48</sup> *Id.*

<sup>49</sup> 17 CFR 240.17Ad-22(e)(18).

<sup>50</sup> Rule 3A, Section 3(d), *supra* note 4.

<sup>51</sup> 17 CFR 240.17Ad-22(e)(18).

Rule 17Ad-22(e)(21)(i) under the Act requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves, and have the covered clearing agency's management regularly review the efficiency and effectiveness of its clearing and settlement arrangements.<sup>52</sup> FICC believes that the proposed changes described in Item II(A)1(ii) above would improve the efficiency and effectiveness of FICC's clearing and settlement arrangements by making it more operationally efficient for Sponsoring Members and their Sponsored Members that are money market funds and other mutual funds to transact Repo Transactions (particularly term Repo Transactions) through FICC by allowing them to settle such Repo Transactions on the tri-party repo platform of a Sponsored GC Clearing Agent Bank in a similar manner to the way such Sponsoring Members and Sponsored Members settle tri-party repo transactions with each other outside of central clearing. FICC also believes that the proposed rule changes described in Item II(A)1(iv) above would improve the efficiency and effectiveness of FICC's clearing and settlement arrangements by removing the quarterly representation requirement of Sponsoring Members under Section 2 of Rule 3A, which, as described above, overlaps and is redundant with the separate requirement under Section 3(d) of Rule 3A that requires a Sponsoring Member to notify FICC if its Sponsored Member is no longer either a "qualified institutional buyer" as defined in Rule 144A, or a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i) of Rule 144A.<sup>53</sup> Therefore, FICC believes that the proposed changes described in Items II(A)1(ii) and II(A)1(iv) above are consistent with Rule 17Ad-22(e)(21)(i).<sup>54</sup>

*(B) Clearing Agency's Statement on Burden on Competition*

FICC believes that the proposed changes described in Item II(A)1(ii) above, *i.e.*, to add the Sponsored GC Service, could promote competition by allowing a greater variety of institutions to become Sponsoring Members and Sponsored Members and could encourage Sponsoring Members and Sponsored Members to submit to FICC a greater number and variety of

transactions, including, in particular, term Repo Transactions.

The proposed changes described in Item II(A)1(ii) above, *i.e.*, to add the Sponsored GC Service, which would allow Sponsoring Members and their Sponsored Member clients to submit for clearing Repo Transactions that settle on a tri-party repo platform of a Sponsored GC Clearing Agent Bank in a manner consistent with the way Sponsoring Members and their Sponsored Member clients settle tri-party repo transactions outside of central clearing today, could promote competition. FICC believes this new Sponsored GC Service could encourage more institutions to become Sponsoring Members and Sponsored Members. As described above, the existing Service's requirement that all Sponsored Member Trades be margined exclusively in cash through FICC's funds-only settlement process is not conducive to certain cash provider Sponsored Members, particularly money market funds and other mutual funds, being able to transact Repo Transactions with their Sponsoring Members in central clearing. Therefore, FICC believes the proposed changes described in Item II(A)1(ii) above could promote competition because they could cause Sponsoring Members to accept a greater number of Sponsored Members, including those institutions who may not be generally operationally equipped to provide or receive cash margin in connection with their term repo activity (either bilaterally or in central clearing). FICC also believes that the ability to submit for clearing Repo Transactions that settle on a tri-party repo platform of a Sponsored GC Clearing Agent Bank in a manner consistent with the way Sponsoring Members and their Sponsored Member clients settle tri-party repo transactions outside of central clearing today may also attract more institutions to become Sponsoring Members.

Furthermore, FICC believes that these proposed changes described in Item II(A)1(ii) above may also encourage Sponsoring Members and Sponsored Members to submit to FICC a greater number and variety of securities transactions, including, in particular, term Repo Transactions. As described above, in order to engage in term repo activity, money market funds and other mutual funds typically require the support of a tri-party repo clearing bank to administer the collateral management on such trades. The new Sponsored GC Service would allow Sponsoring Members and their Sponsored Member clients to submit for clearing Repo Transactions that settle on the tri-party repo platform of a Sponsored GC

<sup>52</sup> 17 CFR 240.17Ad-22(e)(21)(i).

<sup>53</sup> Rule 3A, Section 3(d), *supra* note 4.

<sup>54</sup> 17 CFR 240.17Ad-22(e)(21)(i).

Clearing Agent Bank in a manner consistent with the way Sponsoring Members and Sponsored Members settle tri-party repo transactions outside of central clearing, thereby making it more operationally efficient for them to transact Repo Transactions (particularly term Repo Transactions) with each other through FICC. Therefore, FICC believes these proposed changes described in Item II(A)1(ii) above could promote competition because they could encourage Sponsoring Members and Sponsored Members to submit to FICC a greater number and variety of securities transactions, including term Repo Transactions.

FICC believes that the proposed changes described in Item II(A)1(iii) above could promote competition. FICC believes that the proposed changes described in Item II(A)1(iii) above may encourage Sponsoring Members and Sponsored Members to submit to FICC a greater number of securities transactions. As described above, the proposed changes would allow FICC to recognize, for CCLF calculation purposes, any offsetting settlement obligations as between a Sponsoring Member's netting account and its Sponsoring Member Omnibus Account to ensure that a Sponsoring Member's CCLF obligation is calculated in a manner that more closely aligns with the liquidity risk associated with Sponsored Member Trades. Specifically, as described above, if a Sponsoring Member enters into a Sponsored Member Trade without another perfectly offsetting Sponsored Member Trade, it is subject to a CCLF obligation for its positions that is in excess of the liquidity risk that its positions generate. With this proposed change, FICC would be able to calculate a Sponsoring Member's CCLF obligation in a manner that more closely aligns with the liquidity risk associated with Sponsored Member Trades and thereby reduce unnecessary costs. In addition, as described above, unlike other Netting Members, Sponsoring Members do not have the option to collapse all of their FICC/GSD activity into one participant account in order to reap the commensurate benefits of offsetting positions for the purposes of reducing their CCLF obligations. With the proposed changes described in Item II(A)1(iii) above, FICC would be able, for CCLF calculation purposes, to recognize the offsetting settlement obligations across the Sponsoring Member's netting account and its Sponsoring Member Omnibus Account, and therefore, FICC believes these proposed changes may encourage more repo activity through

the Service. As such, FICC believes the proposed changes described in Item II(A)1(iii) above could promote competition because they could encourage Sponsoring Members and Sponsored Members to submit a greater number of securities transactions to be cleared and settled by FICC.

FICC believes that the proposed changes described in Item II(A)1(iv) above could promote competition. FICC believes the proposed changes described in Item II(A)1(iv) above could encourage Sponsoring Members to sponsor more Sponsored Members and thereby encourage the submission of more securities transactions to FICC because it would eliminate the administrative burdens on FICC and the Sponsoring Members of the overlapping and redundant quarterly representation requirement in Section 2 of Rule 3A described above.<sup>55</sup>

FICC does not believe that the proposed changes described in Item II(A)1(v) above to make a clarification, certain corrections, and certain technical changes would have an impact on competition. The proposed changes described in Item II(A)1(v) above would simply provide additional clarity, transparency and consistency to the Rules and not affect Members' rights and obligations. As such, FICC believes that the proposed changes described in Item II(A)1(v) above would not have any impact on competition.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

FICC reviewed the proposed rule change with Sponsoring Members and Sponsored Members in order to benefit from their expertise. Written comments relating to this proposed rule change have not been received from the Sponsoring Members, Sponsored Members or any other person. FICC will notify the Commission of any written comments received by FICC.

**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.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

**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](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2021-003 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-FICC-2021-003. 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 FICC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>).

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

<sup>55</sup> Rule 3A, Section 2, *supra* note 4.

should refer to File Number SR-FICC-2021-003 and should be submitted on or before June 22, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>56</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-11407 Filed 5-28-21; 8:45 am]

**BILLING CODE 8011-01-P**

## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2021-0013]

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions, and extensions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden

estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA

*Comments: <https://www.reginfo.gov/public/do/PRAMain>. Submit your comments online referencing Docket ID Number [SSA-2021-0013].*

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-966-2830, Email address: *OR.Reports.Clearance@ssa.gov*.

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain*, referencing Docket ID Number [SSA-2021-0013].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the

date of this notice. To be sure we consider your comments, we must receive them no later than August 2, 2021. Individuals can obtain copies of the collection instruments by writing to the above email address.

**1. Request for Workers' Compensation/Public Disability Benefit Information—20 CFR 404.408(e)—0960-0098.** Individuals who received both Social Security disability payments and Worker's Compensation/Public Disability Benefits (WC/PDB) must notify SSA about their WC/PDB, so that the agency can reduce the claimants' Social Security disability payments accordingly. Recipients may submit evidence of their WC/PDB, such as a copy of their award notice or benefit check, or have their WC/PDB provider complete Form SSA-1709 to document their WC/PDB to SSA. The respondents are Federal, State, and local agencies, insurance carriers, and public or private self-insured companies administering WC/PDB benefits to disability recipients.

*Type of Request:* Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Total annual opportunity cost (dollars) **
SSA-1709 .....	120,000	1	15	30,000	* \$26.65	** \$799,500

\* We based this figure by averaging both the average Federal, State, and Local Government hourly wages ([https://www.bls.gov/oes/current/naics3\\_999000.htm](https://www.bls.gov/oes/current/naics3_999000.htm)), and the average Insurance Claims and Policy Processing Clerks hourly wages, as reported by Bureau of Labor Statistics data (<https://www.bls.gov/oes/current/oes439041.htm>).

\*\* This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

**2. Coverage of Employees of State and Local Governments—20 CFR part 404, subpart M—0960-0425.** The regulations at 20 CFR part 404, subpart M prescribe the rules for States to submit reports of deposits and recordkeeping to SSA. SSA requires States (and interstate instrumentalities) to provide wage and

deposit contribution information for pre-1987 tax years. Since not all States have completely satisfied their pending wage report and contribution liability with SSA for pre-1987 tax years, SSA needs these regulations until all pending items with the States are completed, and to allow for collection of

this information in the future, if necessary. The respondents are State and local governments or interstate instrumentalities.

*Type of Request:* Extension of an OMB-approved information collection.

Regulation section	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Total annual opportunity cost (dollars) **
404. 1204 (a) & (b) .....	52	1	30	26	* \$28.74	** \$747
404.1215 .....	52	1	60	52	* 28.74	** 1,494
404. 1216 (a) & (b) .....	52	1	60	52	* 28.74	** 1,494

<sup>56</sup> 17 CFR 200.30-3(a)(12).

Regulation section	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Total annual opportunity cost (dollars)**
Totals .....	156	.....	.....	130	.....	** 3,735

\* We based this figure by averaging both the average State Government hourly wages ([https://www.bls.gov/oes/current/naics4\\_999200.htm](https://www.bls.gov/oes/current/naics4_999200.htm)), and the average Local Government hourly wages, as reported by Bureau of Labor Statistics data ([https://www.bls.gov/oes/current/naics4\\_999300.htm](https://www.bls.gov/oes/current/naics4_999300.htm)).

\*\* This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

**3. Representative Payment—20 CFR 404.2011, 404.2025, 416.611, and 416.625—0960–0679.** The regulations at 20 CFR 404.2011 and 416.611 allow SSA to make payments to recipients' representative payees if it may cause substantial harm for the beneficiaries to receive their payments directly. The

regulations allow beneficiaries to dispute a finding that substantial harm exists by providing SSA with evidence to reevaluate the determination. In addition, sections 20 CFR 404.2025 and 416.625 describe the information representative payees must provide SSA about their continuing relationship and

responsibility for the recipients, and explain how they use the recipients' payments to verify payee performance. The respondents are Title II and Title XVI recipients, and their representative payees.

*Type of Request:* Revision of an OMB-approved information collection.

Regulation section	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Total annual opportunity cost (dollars)**
404.2011(a)(1); 416.611(a)(1) .....	260	1	15	65	* \$19.01	** \$1,236
404.2025; 416.625 .....	3,090	1	6	309	* 19.01	** 5,874
Totals .....	3,350	.....	.....	374	.....	** 7,110

\* We based this figure on averaging both the average DI payments based on SSA's current FY 2021 data (<https://www.ssa.gov/legislation/2021FactSheet.pdf>), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data ([https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm)).

\*\* This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

**4. Function Report—Adult—20 CFR 404.1512 & 416.912—0960–0681.** Individuals receiving or applying for Social Security disability insurance (SSDI) or Supplemental Security Income (SSI) must provide medical evidence and other proof SSA requires to prove their disability. SSA staff, and, on SSA's behalf, State Disability Determination

Services' (DDS) employees, collect the information via paper Form SSA-3373, or through an in-person or telephone interview for cases where we need information about a claimant's activities and abilities to evaluate the claimant's disability. We use the information to document how claimants' disabilities affect their ability to function, and to

determine eligibility, or continued eligibility, for SSI and SSDI claims. The respondents are adult Title II and Title XVI claimants, or current recipients undergoing redeterminations of benefits.

*Type of Request:* Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Average wait time in field office or for teleservice centers (minutes)**	Total annual opportunity cost (dollars)***
SSA-3373 .....	1,734,635	1	61	1,763,546	* \$10.95	** 21	*** \$25,958,815

\* We based this figure on the average DI payments based on SSA's current FY 2021 data (<https://www.ssa.gov/legislation/2021FactSheet.pdf>).

\*\* We based this figure on averaging both the average FY 2021 wait times for field offices and teleservice centers, based on SSA's current management information data.

\*\*\* This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

**II. SSA submitted the information collections below to OMB for clearance.** Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication.

To be sure we consider your comments, we must receive them no later than July 1, 2021. Individuals can obtain copies of these OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov*.

**1. Certification by Religious Group—20 CFR 404.1075—0960–0093.** SSA is responsible for determining whether religious groups meet the qualifications exempting certain members and sects from payment of Self-Employment

Contribution Act taxes under the Internal Revenue Code, Section 1402(g). SSA sends Form SSA-1458, Certification by Religious Group, to a group's authorized spokesperson to complete and verify organizational

members meet or continue to meet the criteria for exemption. The respondents are spokespersons for religious groups or sects.

*Type of Request:* Revision of an OMB-approved information collection.

*Note:* This is a correction notice: SSA published the incorrect burden information for this collection at 86 FR 12068, on 3/01/21. We are correcting this error here.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Total annual opportunity cost (dollars)**
SSA-1458 .....	142	1	15	36	* \$27.07	** \$975

\* We based this figure on average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data ([https://www.bls.gov/oes/current/oes\\_nat.htm#00-0000](https://www.bls.gov/oes/current/oes_nat.htm#00-0000)).

\*\* This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

*2. Application for Extra Help with Medicare Prescription Drug Plan Costs—20 CFR 418.3101—0960—0696.* The Medicare Modernization Act of 2003 mandated the creation of the Medicare Part D prescription drug coverage program and the provision of

subsidies for eligible Medicare beneficiaries. SSA uses Form SSA-1020 or the internet i1020, the Application for Extra Help with Medicare Prescription Drug Plan Costs, to obtain income and resource information from Medicare beneficiaries, and to make a

subsidy decision. The respondents are Medicare beneficiaries applying for the Part D low-income subsidy.

*Type of Request:* Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Average wait time in field office (minutes)**	Total annual opportunity cost (dollars)***
SSA-1020 (paper applications) .....	448,836	1	30	224,418	* \$27.07	0	*** \$6,074,995
i1020 (online applications) .....	365,871	1	25	152,446	* 27.07	0	*** 4,126,713
Field Office Interviews .....	85,873	1	30	42,937	* 27.07	** 24	*** 2,092,132
<b>Totals .....</b>	<b>900,580</b>	.....	.....	<b>419,801</b>	.....	.....	<b>*** 12,293,840</b>

\* We based this figures on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data ([https://www.bls.gov/oes/current/oes\\_nat.htm#00-0000](https://www.bls.gov/oes/current/oes_nat.htm#00-0000)).

\*\* This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

*3. Rules of Conduct and Standards of Responsibility for Appointed Representatives—20 CFR 404.1740(b)(5), 404.1740(b)(6), 404.1740(b)(9), 416.1540(b)(5), 416.1540(b)(6), and 416.1540(b)(9)—0960—0804.* Section 205(a) of the Act authorizes SSA's Commissioner to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions. Section 1631(d)(1) of the Act incorporates section 205(a) and applies it to Title XVI of the Act. Additionally, sections 206(a) and 1631(d)(2) of the Act provide that the Commissioner has the authority to establish rules and regulations governing the recognition of individuals who represent claimants before the Commissioner. Individuals appointed to

represent claimants before SSA must report to SSA in writing whenever one of the following situations in our revised regulations occurs:

- 20 CFR 404.1740(b)(5) and 416.1540(b)(5)—This regulatory section requires representatives to disclose to SSA in writing, at the time a medical or vocational opinion is submitted to SSA, or as soon as the representative is aware of the submission to us, if the representative's employee or any individual contracting with the representative drafted, prepared, or issued a medical or vocational opinion about a claimant's disability, or if the representative referred or suggested that the claimant seek an examination from, treatment by, or the assistance of the individual providing opinion evidence;
- 20 CFR 404.1740(b)(6) and 416.1540(b)(6)—This regulatory section

requires representatives to disclose to SSA immediately if the representative discovers that his or her services are or were used by the claimant to commit fraud against SSA;

- 20 CFR 404.1740(b)(7) and 416.1540(b)(7)—This regulatory section requires representatives to disclose to SSA whether the representative is or has been disbarred or suspended from any bar or court to which he or she was previously admitted to practice, including instances in which a bar or court took administrative action to disbar or suspend the representative in lieu of disciplinary proceedings; If the disbarment or suspension occurs after the appointment of the representative, the representative will immediately disclose the disbarment or suspension to SSA;

- 20 CFR 404.1740(b)(8) and 416.1540(b)(8)—This regulatory section requires representatives to disclose to SSA whether the representative is or has been disqualified from participating in or appearing before any Federal program or agency, including instances in which a Federal program or agency took administrative action to disqualify the representative in lieu of disciplinary proceedings. If the disqualification occurs after the appointment of the representative, the representative will immediately disclose the disqualification to SSA; and;

- 20 CFR 404.1740(b)(9) and 416.1540(b)(9)—This regulatory section requires representatives to disclose to SSA whether the representative has been removed from practice or suspended by a professional licensing authority for reasons that reflect on the representative's character, integrity, judgment, reliability, or fitness to serve as a fiduciary. If the removal or suspension occurs after the appointment of the representative, the representative will immediately disclose the removal or suspension to SSA.

A representative's obligation to report these events is ongoing, and SSA requires representatives to report any time one or more of these events occurs. We consider this information essential to ensure the integrity of our administrative process and to safeguard the rights of all claimants. SSA requires representatives to notify SSA in writing, but there is no prescribed format for these reports. The respondents are individuals appointed to represent claimants before SSA.

*Type of Request:* Extension of an OMB-approved information collection.

Regulation section	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Total annual opportunity cost (dollars)**
404.1740(b)(5)/416.1540(b)(5) .....	43,600	1	5	3,633	* \$26.45	** \$96,093
404.1740(b)(6)/416.1540(b)(6) .....	2	1	5	0	* 69.86	** 0
404.1740(b)(7)/416.1540(b)(7) .....	50	1	5	4	* 69.86	** 279
404.1740(b)(8)/416.1540(b)(8) .....	10	1	5	1	* 69.86	** 70
404.170(b)(9)/416.1540(b)(9) .....	10	1	5	1	* 69.86	** 70
<b>Totals .....</b>	<b>43,672</b>			<b>3,639</b>		<b>96,512</b>

\* We based this figure on average hourly wages for paralegals/legal assistants and lawyers as posted by the U.S. Bureau of Labor Statistics ([https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm)).

\*\* These figures do not represent actual costs that SSA is imposing on representatives to complete the required disclosures; rather, these are theoretical opportunity costs for the additional time representatives or their employees and associates will spend to complete the required disclosures. *There is no actual charge to representatives to complete the required disclosures.*

Dated: May 25, 2021.

**Naomi Sipple,**  
Reports Clearance Officer, Social Security  
Administration.

[FR Doc. 2021-11421 Filed 5-28-21; 8:45 am]

**BILLING CODE 4191-02-P**

#### TENNESSEE VALLEY AUTHORITY

#### Supplemental Environmental Impact Statement—Browns Ferry Nuclear Site Subsequent License Renewal

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Notice of intent.

**SUMMARY:** The Tennessee Valley Authority (TVA) intends to prepare a Supplemental Environmental Impact Statement (SEIS) to address the potential environmental effects associated with obtaining subsequent license renewals (SLR) for the Browns Ferry Nuclear Plant (BFN) Units 1, 2, and 3 located in Limestone County, Alabama. Renewal of the operating licenses would allow the plant to continue to operate for an additional 20 years beyond the current operating licenses expiration dates of 2033, 2034, and 2036 for Units 1, 2, and 3, respectively. TVA plans to evaluate a variety of alternatives including a no-action alternative. Public comments are

invited to identify other potential alternatives, relevant information, and analysis related to the proposed action.

**DATES:** The public scoping period begins with the publication of this Notice in the **Federal Register** and comments on the scope of the SEIS must be received or postmarked by July 1, 2021. To accommodate social distancing guidelines and public health recommendations related to the COVID-19 pandemic, TVA will have a virtual meeting room available for the duration of the scoping period. Visit <https://www.tva.com/nepa> to obtain more information.

**ADDRESSES:** Comments may be submitted in writing to J. Taylor Cates, NEPA Specialist, 1101 Market Street, BR 2C-C, Chattanooga, TN 37402. Comments may also be submitted online at: <https://www.tva.com/nepa> or by email to [nepa@tva.gov](mailto:nepa@tva.gov). Due to COVID-19 teleworking restrictions, electronic submission of comments is encouraged to ensure timely review and consideration.

**FOR FURTHER INFORMATION CONTACT:** Other related questions should be sent to Tennessee Valley Authority, J. Taylor Cates, NEPA Specialist, 1101 Market Street, BR 2C-C, Chattanooga, TN 37402, or 423-751-2732/[jtcates@tva.gov](mailto:jtcates@tva.gov).

**SUPPLEMENTARY INFORMATION:** This Notice is provided in accordance with the Council on Environmental Quality's (CEQ) regulations for implementing the National Environmental Policy Act (NEPA) at 40 CFR parts 1500–1508 and Section 106 of the National Historic Preservation Act (NHPA), and its implementing regulations (36 CFR part 800). The SEIS will be prepared consistent with the 2020 CEQ regulations for implementing NEPA at 40 CFR parts 1500–1508 (85 FR 43304–43376, Jul. 16, 2020). The regulations of the Nuclear Regulatory Commission (NRC) in 10 CFR part 54 set forth the applicable license extension requirements.

#### TVA Power System

TVA is a corporate agency and instrumentality of the United States, created by and existing pursuant to the TVA Act of 1933 (16 U.S.C. part 831), and created to, among other things, foster the social and economic welfare of the people of the Tennessee Valley region and promote the proper use and conservation of the Valley's natural resources. TVA generates and distributes electricity for business customers and local power distributors, serving more than 10 million people in parts of seven southeastern states. TVA is fully self-financed without Federal

appropriations, and funds virtually all operations through electricity sales and power system bond financing. In addition to operating and investing its revenues in its electric system, TVA provides flood control, navigation and management for the Tennessee River system, and assists local power companies and state and local governments with economic development efforts.

Dependable electrical capacity on the TVA power system is about 33,000 Mega Watts Electric (MWe). TVA's current generating assets include one pumped-storage facility, one diesel generator site, three nuclear plants, five coal plants, nine combustion turbine plants, eight combined cycle plants, 14 solar energy sites, 29 hydroelectric dams, and several small renewable generating facilities. A portion of delivered power is obtained through long-term power purchase agreements. About 13 percent of TVA's annual generation is from hydro; 14 percent is from coal; 27 percent is from natural gas; 41 percent is from nuclear; and the remainder is from wind and solar. TVA also gains available capacity through its energy efficiency programs. TVA transmits electricity from these facilities over almost 16,000 miles of transmission lines. Like other utility systems, TVA has power interchange agreements with utilities surrounding the Tennessee Valley region, and routinely buys and sells power.

## Background

TVA operates BFN Units 1, 2, and 3 in Limestone County, Alabama. BFN is located on an 840-acre tract on the north shore of Wheeler Reservoir at Tennessee River Mile (TRM) 294, approximately 10 miles northwest of Decatur, Alabama, and 10 miles southwest of Athens, Alabama. BFN consists of three General Electric boiling water reactors (BWRs) and associated turbine generators that collectively supply approximately 3,900 MWe of electric power to the TVA transmission and distribution system.

In March 2002 and June 2002, TVA issued a Final SEIS (FSEIS) and a Record of Decision (ROD) for the operating license renewal of BFN. TVA submitted a License Renewal Application (LRA) to the NRC in December 2003 for a 20-year renewal of the operating licenses for each BFN unit. The environmental conclusions of the NRC FSEIS did not differ from the TVA FSEIS conclusions, and the NRC issued Supplement 21 regarding Browns Ferry Nuclear Plant Units 1, 2, and 3, to the Generic EIS (GEIS) for License Renewal of Nuclear Plants (NUREG-1437) in June 2005. The NRC issued

operating license renewals for Units 1, 2, and 3 in May 2006, allowing continued operation of the three BFN units until 2033, 2034, and 2036, respectively.

In September 2015, TVA submitted a license amendment request (LAR) for extended power uprate (EPU) of all three units. The NRC issued a draft Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) in the *Federal Register* on December 1, 2016 for public comment. On May 22, 2017 the NRC issued the Final EA and FONSI related to the EPU license amendment.

## Project Purpose and Need

The purpose of the proposed action is to help provide continued generation of baseload power between 2033 and 2053 by obtaining license renewals to operate BFN Units 1, 2, and 3. BFN is considered baseload power because the plant generally runs at close to maximum output. BFN's current baseload generation supports future forecasted baseload power needs, as outlined in TVA's 2019 Integrated Resource Plan (IRP), by helping to maintain grid stability and generating capacity for TVA's generation portfolio mix. As an integral part of TVA's current generation portfolio, in 2020, BFN produced approximately 20 percent of TVA's average generation capacity. Renewal of the current operating licenses would allow BFN to continue supplying approximately 3,900 MWe capacity of baseload power.

TVA needs to generate sufficient electricity to supply the Tennessee Valley with increasingly clean, reliable, and affordable electricity for the foreseeable future for the region's homes and businesses, working with local power companies to keep service steady and reliable. By renewing the licenses, TVA would maximize use of existing assets to support TVA's goals of generating electricity at the lowest feasible cost for the people of the Tennessee Valley. BFN's carbon-free generating capacity supports TVA's goal of a net-zero carbon emissions generating system by 2050.

## Preliminary Proposed Action and Alternatives

TVA proposes to submit a Subsequent LRA (SLRA) to the NRC requesting renewal of BFN operating licenses. Renewal of the current operating licenses would permit operation for an additional 20 years past the current operating license terms, which expire in 2033, 2034, and 2036 for Units 1, 2, and 3, respectively. This SEIS is being prepared to provide the public and TVA

decision-makers an assessment of the environmental impacts of renewing BFN Unit 1, 2, and 3 operations, as well as provide the public an opportunity to participate in the SEIS process. License renewal does not require any new construction or modifications beyond normal maintenance and minor refurbishment. However, there are other proposed projects not directly related to SLR that are connected to, or could affect, license renewal.

The SEIS proposes to address a range of alternatives (A–D) including: (A) The No-Action Alternative; (B) BFN Subsequent License Renewal; (C) Use of Existing Generating Assets; and (D) Use of Existing and Construction of New Generating Assets. Two additional alternatives, (E) Replacement of BFN Generating Capacity Entirely with Renewable Energy Sources and (F) Replacement of BFN Generating Capacity Entirely with Purchase Power, were considered but eliminated.

## Anticipated Environmental Impacts

The SEIS will include a detailed evaluation of the environmental, social, and economic impacts associated with implementation of the proposed action. Resource areas to be addressed in the SEIS include, but are not limited to: Air quality; aquatics; botany; climate change; cultural resources; emergency planning; floodplains; geology and groundwater; hydrothermal; land use; navigation; noise and vibration; radiological safety; soil erosion and surface water; socioeconomics and environmental justice; threatened and endangered species; transportation; visual; waste; water use; wetlands; and wildlife. Measures to avoid, minimize, and mitigate adverse effects will be identified and evaluated in the SEIS.

In preparing this SEIS, TVA will consider the analysis within the NRC's Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants (NUREG-1437, Revision 1), where the NRC generically considered the environmental effects of renewing nuclear power plant operating licenses for a 20-year period (results are codified in 10 CFR part 51). The GEIS identified 78 environmental issues and reached generic conclusions on environmental impacts for 59 of those issues that apply to all plants or to plants with specific design or site characteristics. The GEIS' generic assessment is relevant to the assessment of impacts of the proposed action at BFN. Generic information from the NRC GEIS that is related to the current assessment would be incorporated by reference, generally following the tiering process described in 40 CFR 1501.11,

with the SEIS providing a more narrow analysis relevant to the specific aspects of this proposed project. Additional plant-specific review would be conducted for impacts not covered by the GEIS and which are encompassed by the range of resource issue areas identified above.

#### Anticipated Permits and Other Authorizations

TVA anticipates consulting with the required authorities including, but not limited to: The Endangered Species Act; Bald and Golden Eagle Protection Act; Rare Species Protection and Conservation Act; National Historic Preservation Act; Clean Air Act; and Federal Clean Water Act.

TVA anticipates seeking required permits or authorizations as appropriate, from the following governmental entities: The Nuclear Regulatory Commission; US Army Corps of Engineers; US Coast Guard; US Environmental Protection Agency; Alabama Department of Environment and Conservation; US Fish and Wildlife Service; Alabama State Historic Preservation Officer; and Tribal Historic Preservation Officers. This is not an exhaustive list, other permits or authorizations may be sought as required or appropriate.

#### Public Participation and Scoping Process

TVA seeks comment and participation from all interested parties for the proposed action, including, but not limited to, assisting TVA in determining the scope of issues for analysis in the SEIS. Information about this project is available at <https://www.tva.com/nepa>, which includes a link to an online public comment page. TVA invites the public to identify other alternatives, and analysis relevant to the proposed action. Comments must be received or postmarked no later than July 1, 2021. Federal, state, local agencies, and Native American Tribes are also invited to provide comments.

Please note that any comments received, including names and addresses, will become part of the project administrative record and will be available for public inspection.

To accommodate social distancing guidelines and public health recommendations related to the COVID-19 pandemic, TVA will have a virtual meeting room available for the duration of the scoping period that includes a range of information on the proposed action. Visit <https://www.tva.com/nepa> to obtain more information about the virtual open house.

#### SEIS Preparation and Schedule

TVA will consider comments received during the scoping period and develop a scoping report which will be published at <https://www.tva.com/nepa>. The scoping report will summarize public and agency comments that were received and identify the projected schedule for completing the SEIS process. Following completion of the environmental analysis for SLR, TVA will post a Draft SEIS for public review and comment on the project web page. TVA anticipates holding a public open house, which may be virtual, after releasing the Draft SEIS. Open house details will be posted on TVA's website in conjunction with the Draft SEIS. TVA expects to release the Draft SEIS in mid-2022.

TVA will consider comments received on the Draft SEIS, as well as cost, engineering, risk and other applicable evaluations before selecting one or more alternatives as preferred in the Final SEIS. TVA projects completing a Final SEIS in early 2023. A final determination on proceeding with the preferred alternative will be documented in a ROD.

**Authority:** 40 CFR 1501.9.

**Rebecca Tolene,**

*Vice President, Environment.*

[FR Doc. 2021-11557 Filed 5-28-21; 8:45 am]

**BILLING CODE 8120-08-P**

#### DEPARTMENT OF TRANSPORTATION

##### Federal Aviation Administration

#### Notice of Intent To Release Certain Properties From All Terms, Conditions, Reservations and Restrictions of a Quitclaim Deed Agreement Between City of Tallahassee and the Federal Aviation Administration for the Tallahassee International Airport, Tallahassee, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Request for public comment.

**SUMMARY:** The FAA hereby provides notice of intent to release certain airport properties 44.66 acres at the Tallahassee International Airport, Tallahassee, FL from the conditions, reservations, and restrictions as contained in a Quitclaim Deed agreement between the FAA and the City of Tallahassee, dated March 14, 1990. The release of property will allow the City of Tallahassee to dispose of the property for non-aeronautical purposes. The City of Tallahassee requests the release of a 44.66 acre tract located along Capital Circle SW in Tallahassee,

Florida to facilitate the widening of State Road 263 for municipal development. This capital improvement project is funded by the Florida Department of Transportation. The parcel is currently designated as aeronautical property. The property will be released of its federal obligations given the land is no longer required by The City of Tallahassee. The Fair Market Value (FMV) of this parcel has been determined to be \$2,020,050.00.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Tallahassee International Airport and the FAA Airports District Office.

#### SUPPLEMENTARY INFORMATION:

Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

**DATES:** Comments are due on or before July 1, 2021.

**ADDRESSES:** Documents are available for review at the Tallahassee International Airport, 3300 Capital Circle SW, Suite One, Tallahassee, FL 32310-8732 and the FAA Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, FL 32819-9058. Written comments on the Sponsor's request must be delivered or mailed to: Stephen Wilson, Program Manager, Orlando Airports District Office, 8427 South Park Circle, Suite 524, Orlando, FL 32819-9058.

In addition, a copy of any comments submitted to the FAA must be mailed or delivered to Mr. Eric Houge, Airport Engineer, Tallahassee International Airport, 3300 Capital Circle SW, Suite One, Tallahassee, FL 32310-8732.

#### FOR FURTHER INFORMATION CONTACT:

Stephen Wilson, Program Manager, (407) 487-7229, Orlando Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, FL 32819-9058.

Issued in Orlando, FL on May 26, 2021.

**Bartholomew Vernace,**

*Manager, Orlando Airports District Office, Southern Region.*

Revision Date 11/22/00.

[FR Doc. 2021-11435 Filed 5-28-21; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration**

[Docket No. NHTSA-2021-0039]

**Agency Information Collection Activities; Notice and Request for Comment; State Data Transfer for Vehicle Crash Information**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments on a request for approval of a new information collection.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) is reissuing an announcement of our intention to request approval from the Office of Management and Budget (OMB) for a new information collection and inviting public comments. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes a collection of information for which NHTSA intends to seek OMB approval on State Data Transfer for Vehicle Crash Information collection. On May 31, 2018 NHTSA published a notice in the **Federal Register** soliciting public comments with 60-day comment period. On July 23, 2018, NHTSA extended the comment period to September 14, 2018.<sup>1</sup> Four comments were received before the comment period expired. One comment from Governors Highway Safety Association was submitted after the comment period expired. Given the extended time since the publication of that notice, NHTSA is publishing this new 60-day notice to request comment on its proposed State Data Transfer information collection. This new notice addresses comments received on the original 60-day notice. This notice also announces that NHTSA has requested emergency clearance from OMB for this information collection.

**DATES:** Comments must be submitted on or before August 2, 2021.

**ADDRESSES:** You may submit comments identified by the Docket No. NHTSA-2021-0039 through any of the following methods:

- **Electronic submissions:** Go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

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

- **Mail or Hand Delivery:** Docket Management, 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. To be sure someone is there to help you, please call (202) 366-9322 before coming.

**Instructions:** All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

**Privacy Act:** Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <https://www.transportation.gov/privacy>.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets via internet.

**FOR FURTHER INFORMATION CONTACT:** For additional information or access to background documents, contact Michael Frenchik, Office of Data Acquisition, Safety Systems Management Division, (NSA-0130), (202) 366-0641, National Highway Traffic Safety Administration, W53-303, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (a)

Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) how to enhance the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including 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. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

**Title:** State Data Transfer (SDT) for Vehicle Crash Information.

**OMB Control Number:** New.

**Form Number(s):** None.

**Type of Request:** New.

**Type of Review Requested:** Regular.

**Requested Expiration Date of Approval:** 3 years from date of approval.

**Summary of the Collection of Information**

The State Data Transfer (SDT) program is a voluntary collection of motor vehicle crash data. State agencies collect this information about motor vehicle crashes on Police Accident Reports (PARs)<sup>2</sup> for their own needs. In general, a PAR includes information about the vehicles and individuals involved in a crash, injuries or fatalities resulting from a crash, roadway information, environmental information, information to reconstruct the crash scenes, etc. The SDT is a process through which participating States transfer their PAR data to NHTSA. SDT has two components that NHTSA's National Center for Statistics and Analysis (NCSA) calls protocols:

1. The *State Data System (SDS)* protocol obtains PAR crash data from States that submit data on an annual basis to NCSA. The data is submitted via electronic media, such as encrypted CD-ROM/DVD, or through secured mail or a secure file transfer protocol (SFTP). Files submitted through the SDS protocol are referred to as "annual crash files."

2. The *Electronic Data Transfer (EDT)* protocol obtains PAR crash data, crash reports or crash images from

<sup>2</sup> Police Accident Reports are also known as Police Crash Reports (PCRs) in some jurisdictions.

participating State crash systems through an electronic data transfer. Generally, this transfer occurs on a nightly basis following State data quality control checks and acceptance from each State's centralized database. The information is transmitted using Extensible Markup Language (XML) or JavaScript Object Notation (JSON) files through a web service using Hypertext Transfer Protocol Secure (HTTPS) protocol between a State's crash data system and NHTSA.

The SDT process allows States to submit all of their PAR data to NHTSA. NCSA will then use this data to develop a census of the participating State's crashes. The dataset will help NCSA identify existing and emerging highway safety trends and assess the effectiveness of motor vehicle safety standards and new and emerging technologies on vehicle and highway safety programs. NHTSA will also use the dataset to support NHTSA's Corporate Average Fuel Economy (CAFE) program. Specifically, NHTSA will use the data to analyze the effects vehicle mass has on fatalities in cost benefit analyses for CAFE rulemakings.

#### Description of the Need for the Information and Proposed Use of the Information

NHTSA plans to utilize the SDT data to identify existing and emerging highway safety trends, assess the effectiveness of motor vehicle safety standards, and study the impact of new and emerging technologies on vehicles and highway safety programs. For example, NHTSA plans to combine data from the SDT with information about the type of advanced driver assistance systems (ADAS) on crash-involved vehicles to estimate the effectiveness of vehicles equipped with ADAS technologies such as lane keeping support, automatic emergency braking, blind spot detection, etc.

NHTSA also plans to use the SDT data to automatically pre-populate the motor vehicle crash data it collects for several other NHTSA data collection programs. The following are brief descriptions of these data collection programs:

- FARS (OMB Control No. 2127-0006) is a nationwide census of fatalities caused by motor vehicle traffic crashes. In addition to PAR data, FARS includes detailed information regarding the location of the crash, the vehicles, and the people involved. FARS cases can also include toxicology report data,

medical records, medical examiner reports, etc.<sup>3</sup>

- CRSS (OMB Control No. 2127-0714) is a nationally representative sample of police-reported crashes involving all types of motor vehicles, pedestrians, and cyclists, ranging from property-damage-only crashes to those that result in fatalities. CRSS data elements are a subset of the data elements on each State's PAR.<sup>4</sup>

- CISS (OMB Control Number 2127-0706) is a nationally representative sample of minor, serious, and fatal crashes involving at least one passenger vehicle—cars, light trucks, sport utility vehicles, and vans—towed from the scene. CISS collects data at both the crash level through scene analysis and the vehicle level through vehicle damage assessment together with injury coding. Data collected through CISS expands upon the information that is collected in a PAR.<sup>5</sup>

- The SCI Program provides NHTSA with the most in-depth crash data collected by the agency. The data collected ranges from basic information contained in routine police and insurance crash reports, to comprehensive data from special reports produced by professional crash investigation teams. Hundreds of data elements relevant to the vehicle, occupants, injury mechanisms, roadway, and safety systems are collected for each of the over 100 crashes designated for study annually.

- NTS is a virtual data collection system designed to provide counts and details regarding fatalities and injuries that occur in non-traffic crashes and in non-crash incidents. NTS non-traffic crash data is obtained through NHTSA's information collections for CRSS and FARS. NTS non-crash injury data is based upon emergency department records from a special study conducted by the Consumer Product Safety Commission's National Electronic Injury Surveillance System (NEISS) All Injury Program. NTS non-crash fatality data is derived from death certificate information from the Centers for Disease Control's National Vital Statistics System.

- CIREN combines crash data collection with professional

<sup>3</sup> Additional details about FARS and how the agency collects this information are available in the supporting statements for the ICR with OMB Control No. 2127-0006.

<sup>4</sup> Additional details about CRSS and how the agency collects this information are available in the supporting statements for the ICR with OMB Control No. 2127-0714.

<sup>5</sup> Additional details about CISS and how the agency collects this information are available in the supporting statements for the ICR with OMB Control No. 2127-0706.

multidisciplinary analysis of medical and engineering evidence to determine injury causation in every crash investigation conducted. The mission of the CIREN is to improve the prevention, treatment, and rehabilitation of motor vehicle crash injuries to reduce deaths, disabilities, and human and economic costs.

Until recently, the transfer of vehicle crash data from a State's crash data system to NHTSA's FARS, CRSS and CISS required individuals to manually enter State vehicle crash data into each of the crash data systems operated by NHTSA. The SDT program will allow NHTSA to automate the transfer of State motor vehicle crash data into NHTSA's other data collection efforts that use this information. NHTSA's SDT program will reduce the burden for manual data entry and result in more accurate, high quality and timely data to help save lives, prevent injuries, and reduce economic costs due to motor vehicle crashes.

In addition, the SDT data will be made available to other DOT agencies, such as the Federal Highway Administration and the Federal Motor Carrier Safety Administration, to support their mission to save lives on our national roadways.

#### Request for Emergency Clearance

NHTSA has requested emergency clearance from OMB for the SDT information collection. NHTSA has requested emergency clearance for the maximum permissible period under 5 CFR 1320.13(f) to allow NHTSA to collect the information while it completes the normal clearance procedures. NHTSA has sought emergency clearance because the data collected through the SDT program are critical to several high priority projects for this administration. The SDT data will be used to analyze the effects vehicle mass has on fatalities in cost benefit analyses for CAFE rulemakings. E.O. 13990 requires NHTSA to "as appropriate and consistent with applicable law, [. . .] consider publishing for notice and comment a proposed rule suspending, revising, or rescinding" the SAFE II Rule "by July 2021." Following the normal clearance procedures will not allow NHTSA to receive approval to collect and use this data before the deadline.

The Partnership for Analytics Research in Traffic Safety (PARTS) also needs this data to determine the effectiveness of automated driver assistance systems (ADAS) with Departmental leadership expecting initial analyses later this year.

Given the priorities identified above, this information is needed before NHTSA can complete the normal clearance procedures under 5 CFR part 1320. NHTSA requested that OMB approve or disapprove the collection of information within 3 days.

#### Public Comments

NHTSA published a notice in the **Federal Register** with a 60-day public comment period to announce the proposed EDT protocol part of SDT information collection on May 31, 2018 (83 FR 25112). On July 23, 2018, NHTSA extended the comment period to September 14, 2018, at the request of State-based stakeholders. The agency received five comments in response to the 60-day notice on the proposed information collection titled "State Data Transfer."<sup>6</sup> NHTSA received comments from the Transportation Departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming in a joint submission (referred to as "joint State commenters" in this document);<sup>7</sup> the Oregon Department of Transportation (ODOT); Commercial Vehicle Safety Alliance (CVSA); Governors Highway Safety Association (GHSA); and the Insurance Institute for Highway Safety (IIHS).

CVSA and IIHS were generally supportive of the program while State commenters expressed some concerns about program. The IIHS encouraged NHTSA to move forward with the State Data Transfer effort because the effort would allow for more timely analyses of the data and enable other opportunities to improve the accuracy of the information collected. GHSA expressed support for NHTSA's objective to provide more timely, complete, and high-quality data on motor vehicle crashes and stated that the electronic transfer of State crash data to NHTSA provides new opportunities to achieve this goal, as well as reduce time and cost for State data management activities. However, GHSA also commented that some States face significant barriers to participating.

After reviewing the comments, NHTSA has revised its estimates for number of respondents based on interest from the States and has reclassified the labor costs associated with the burden hour calculations. NHTSA believes the other concerns raised by the commenters can be addressed by providing clarification about the program and its impact on States.

<sup>6</sup> 83 FR 25112, May 31, 2018. NHTSA subsequently extended the comment deadline to September 14, 2018 (83 FR 34912, July 23, 2018).

<sup>7</sup> The South Dakota Department of Public Safety concurs in these comments.

Discussion of the comments is organized by topic below. NHTSA received comments and questions about the program as a whole and program participation; funding; cost and burden estimates; data compatibility and standardization; data confidentiality; additional data elements; and data sharing.

#### General Program Clarifications

The joint State commenters stated that the notice included few specifics about the program and they were uncertain whether implementation of this proposal would result in only the same information being provided by the States to NHTSA as is provided today, via different means, or whether implementation of this proposal would result in States providing more information than they do today.

**NHTSA Response:** The SDT program does result in States providing more information to NHTSA than they do today. Currently, NHTSA only collects crash data on a subset of all vehicle crashes. NHTSA collects data on all crashes involving fatalities through FARS and then collects samples of crashes through CRSS and CISS. This means that there are some crashes that States collect data on that are not reported to NHTSA. The SDT program allows States to submit crash data on all of their crashes to NHTSA. While the scope of the crashes NHTSA will collect data on is expanded, it is not NHTSA's intention to use the SDT program to seek any additional data elements beyond what the States are providing to NHTSA today. However, because State crash databases may contain more data elements than NHTSA currently collects in its existing collections, NHTSA may receive more data elements from some States than is currently collected. This will vary by State and is dependent on what data elements the State chooses to send to NHTSA. Additionally, participating States may choose to only send data on crashes to pre-populate the existing crash databases (*i.e.*, FARS, CRSS, and CISS).

While the SDT program will collect data beyond what States currently provide to NHTSA, NHTSA expects that the EDT protocol will reduce the overall burden for participating States. The EDT protocol is expected to reduce manual data entry in connection with NHTSA's existing collections of crash data. Participation in either SDT protocol is completely voluntary and NHTSA expects States to participate only if they deem it beneficial to them. If a State chooses to participate in the EDT protocol, NHTSA will work with them to set up a data feed, which NHTSA will

use to pre-populate existing crash databases. For example, a subset of the data will be pre-populated into the FARS system. Instead of State analysts manually inputting all of data into FARS program, they can focus on validating the data in the system and completing the FARS entry. This pre-coding of data is expected to reduce time spent on manual data entry and result in more accurate and higher quality data.

#### Program Participation

NHTSA received comments on program participation from ODOT, the joint State commenters, and GHSA. ODOT asked whether NHTSA has the authority to compel States to share or transfer data and ODOT, the joint State commenters, and GHSA commented on the voluntary nature of the program. The joint State commenters said that a voluntary approach would be preferred because of substantial legal and financial challenges to participation. GHSA commented that States are wary about new technology directives and concerned that the State Data Transfer will become mandatory. As support for this concern, GHSA mentioned the significant technical challenges that States faced with the launch of the Grants Management Solutions Suite (GMSS) by NHTSA's Office of Regional Operations and Program Delivery.

**NHTSA Response:** Participation in the SDT program is completely voluntary. NHTSA recognizes that some States would face considerable challenges to participation. Not all States currently have centralized data systems that would allow integration with NHTSA's interface. Because a centralized data system is necessary for participation in SDT, some States would not be able to participate or would need to first create a centralized data system, which would require significant time and financial resources.

#### Funding

The joint State commenters and ODOT commented about the availability of funding to help States achieve compliance with the proposed collection requirement. The joint State commenters state that States do not have unlimited fiscal or personnel resources to address these data issues and, absent new funding from USDOT, to implement this "information collection," States will have to meet these new obligations by using Federal and/or State funds that otherwise would go to other safety programs and efforts. ODOT pointed out that no funding has been identified or provided to aid states in creating the software packages and

translation modules to port the data from the state to NHTSA or to cover the costs of the creation of a statewide crash database in jurisdictions where none exists today. ODOT also stated that the SDT program would require reallocation of States' resources from other major information programs and information systems.

**NHTSA Response:** NHTSA notes that participation in the SDT program is voluntary. NHTSA understands the challenges of integrating data systems and, therefore, assesses each State's readiness for SDT implementation on a case-by-case basis. In order to assist a State wishing to improve its data systems, NHTSA offers incentive grants to states that improve State safety data systems, including to improve the compatibility and interoperability of the State and national data systems. States that are unable to support data transfer may contact NHTSA's regional office about whether the State may apply for a 405(c) State Traffic Safety Information System Improvement grant to improve its data systems.

#### *Cost and Burden Estimates*

ODOT, the joint State commenters, CVSA, and GHSA commented on NHTSA's cost and burden estimates for the EDT protocol. ODOT, the joint State commenters, and CVSA raised concerns that NHTSA underestimated the cost of participation. Specifically, ODOT stated that it thought that the estimates significantly underestimated the cost to States in full-time employee resources and budget by thousands of dollars. The joint State commenters pointed out that relevant data is not always housed in the transportation agencies and it may require a great deal of coordination between State agencies to gather the data. The joint State commenters also raised concerns about the cost of creating and testing software programs that may be needed. CVSA commented that many States would need to undergo significant information technology system changes to deliver the electronic data in the necessary format and that NHTSA underestimated the costs. The joint State commenters further expressed concerns that NHTSA has not issued specifications for the data to be transferred and its format, which makes estimating costs difficult. They also expressed concern that the EDT program would involve changes in the way data is input.

GHSA expressed concerns that if NHTSA's estimates are averages, there may be significant deviation based on State needs. However, GHSA acknowledged that some of the States that have already participated in SDT

agreed with the estimates. GHSA also stated participating States report that SDT programs were lengthy to set up prior to implementing, which could include several months of coordinating calls between the State and NHTSA information technology staff focused chiefly on coordinating computer code.

**NHTSA Response:** The agency has updated the burden estimates for the EDT protocol to better reflect associated costs and anticipated number of new participants. These estimates were informed by the actual level of effort and costs incurred by States that have fully implemented the EDT protocol. The EDT State burden estimate covers the initial establishment of the State-NHTSA connection and subsequent, annualized data transmission and management requirements for submitting data to NHTSA. This cost does not cover any other cost, such as the design and implementation of a centralized crash database in a State. While such a centralized State system is required for SDT participation, the establishment of a centralized State crash database is outside the purview of this supplemental Federal program. SDT does not include the means for which crash data is collected and centralized and should only be considered the mechanism through which the States provide State crash data, voluntarily, to NHTSA using an electronic transmission process.

#### *Data Compatibility and Standardization*

ODOT commented on data compatibility and stated that different State agencies have responsibility for collecting crash data, inconsistent legislative reporting requirements, levels of transparency, and public data reporting limits. CVSA commented on the related topic of data standardization between States. CVSA stated that it encourages the adoption of the Model Minimum Uniform Crash Criteria (MMUCC) which provides a standardized data set for describing vehicle crashes. By further standardizing crash data collected, a more useful and robust data sample can be accumulated at the Federal level.

**NHTSA Response:** NHTSA has, in helping States implement EDT, encountered issues with data compatibility. NHTSA understands that States may have different reporting requirements and will work with the State to seek a mutually acceptable way to implement the EDT protocol. Regarding data standardization, the more compliant a State is with MMUCC, the easier it is for NHTSA to integrate a State's data system into the EDT program. NHTSA cross-references crash

data to the MMUCC 5th Edition for internal use. While compliance with MMUCC is optimal for EDT implementation, it is not required.

#### *Data Confidentiality*

ODOT stated that there are security risks to a State's responsibility to protect personal identifying data and expressed concerns that by sending the data to a Federal agency, it would become a public record and be discoverable. ODOT and the joint State commenters are concerned that access to Federal data adds litigation risks to States and individuals. ODOT stated that it has a significant liability settlement threshold and NHTSA's data system is likely to generate new court cases that the State must defend. The joint State commenters concern that this data transfer to USDOT-NHTSA could create tension with, if not conflict with, State confidentiality protocols and requirements. The joint State commenters stated, 23 U.S.C. 148, "Highway safety improvement program," includes paragraph (h)(4), which provides that "Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for any purpose relating to this section, shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location identified or addressed in the reports, surveys, schedules, lists, or other data." The joint State commenters expressed concern that, given the relationship of any highway safety data to the safety purposes of 23 U.S.C. 148, moving data from State control to Federal control, at a minimum, risks undercutting the intent of 23 U.S.C. 148(h)(4), which includes allowing a State to review safety trends on specific routes for program purposes without having to disclose such information (protection from discovery). The joint State commenters noted that nothing in the notice states that consideration has been given to the potential implications for 23 U.S.C. 148(h)(4), as well as for tort exposure more generally.

GHSA recommended that NHTSA may be able to encourage State participation by clarifying the specific data elements sought in this program and whether and how States might "scrub" personal data, HIPAA information, or other sensitive data before submission. GHSA stated NHTSA clearly has robust procedures in place to comply with 23 U.S.C. 403 (e), which prohibits the public release of crash data that identifies individuals, but the

States would benefit from some additional perspective.

**NHTSA Response:** Data collected by NHTSA is subject to Federal law. Consistent with Federal law, and NHTSA policy, personally identifiable information (PII) contained in SDT data will not be disclosed to the public. All SDT data is encrypted during transfer and maintained in a password protected network drive, with limited access. SDT data is not directly published or made available to analysts outside of DOT because of States concerns. Study data (e.g., FARS, CRSS, CISS, etc.) is published annually only after thorough quality control that ensures PII is withheld from disclosure. NHTSA may also publish aggregated SDT data in reports that analyze the data without disclosing any PII to the public.

#### *Additional Data Elements*

The IIHS commented that, to increase the value of the data collected, the agency should collect vehicle specific (VIN-based) information on advanced crash avoidance and driving automation technologies, particularly in vehicles for which the features are optional. The information could be obtained from manufacturers and included in the final publicly-available crash databases. This would be a major step in enabling researchers to estimate how such features affect crash risk.

**NHTSA Response:** We appreciate IIHS's suggestions about identifying vehicle specific information for the purposes of analyzing the data when safety equipment is optional on a vehicle line and not standard. However, collecting vehicle specific information on the type of safety features the vehicle is equipped is outside the scope of this information collection clearance.

#### *Data Sharing*

GHSA and CVSA commented about data sharing. GHSA commented that States want details on how NHTSA plans to use SDT data on the Federal level and asked about how the data would be made available to other Federal agencies. CVSA commented that the data that is collected at the Federal level should be made available to more than just the U.S. Department of Transportation and other Federal agencies. CVSA recommended that the collected data be made available to States, academia, organizations and other interested parties that can utilize the data to help improve highway safety.

**NHTSA Response:** NHTSA intends to share the data to other DOT agencies,

such as the Federal Highway Administration and the Federal Motor Carrier Safety Administration, to support their mission to save lives on our national roadways. However, NHTSA will not be making the data available to analysts outside of DOT because of concerns expressed by some of the State participants.

**Affected Public:** State Governments.

This voluntary information collection involves State governments, and specifically the State agencies that collect crash data.

**Estimated Number of Respondents:** 38.

Currently, 31 States are voluntarily submitting their annual crash database to NHTSA using the SDS protocol once the Annual file is complete and 19 States are voluntarily submitting their State's data using the EDT protocol where the transfer occurs on a nightly basis. NHTSA estimates that, on average, in each of the next three years, there will be 31 States submitting data using the SDS protocol and 23 States submitting data using the EDT protocol. NHTSA estimates that there will be 15 States submitting data through both EDT and SDS. Therefore, NHTSA estimates the total number of respondents to be 38.

#### *Frequency*

The frequency of this information collection varies State-by-State, potentially from daily to annually, as agreed upon by NHTSA and the individual States. State participating in the SDS protocol typically send a file to NHTSA once a year with all the crashes occurring during a calendar year. States send these files when it has completed its quality control process. For the EDT States, the data is usually transferred every night with the crash cases that have completed the quality control process since the last nightly transfer.

**Estimated Total Annual Burden Hours:** 683 hours.

SDT receives the crash data from States in two different ways. SDS information is obtained annually from States submitted in a more traditional method via electronic media through secured mail or a Secure File Transfer Protocol (SFTP). NHTSA assumes a participating State already has a centralized electronic crash database. Currently, 31 States are voluntarily submitting their annual crash database to NHTSA, with five States sending electronic media and 26 states uploading the database to an SFTP site. Since NHTSA accepts the States' centralized electronic crash database

without changes, NHTSA estimates that it will require eight hours for a State Database Administrator to save a copy of the State's annual crash database onto a SFTP site or electronic media. We estimate an additional four hours will be required for an administrative assistant to package and send the electronic media to NHTSA.

To estimate the labor cost associated with submitting the SDS information, NHTSA looked at wage estimates for the type of personnel involved with copying, packaging and sending the database. NHTSA estimates the total labor costs associated with copying the database by looking at the average wage for Database and Network Administrator and Architects. The Bureau of Labor Statistics (BLS) estimates that the average hourly wage for Database and Network Administrator and Architects (Standard Occupational Classification #15-1240, May 2020) is \$47.80.<sup>8</sup> The Bureau of Labor Statistics estimates that State and local government workers' wages represent 61.9% of total labor compensation costs.<sup>9</sup> Therefore, NHTSA estimates the hourly labor costs for copying the database to be \$77.22 (\$47.80 ÷ 61.9%) for Database and Network Administrator and Architects. The cost associated with the eight hours of Database and Network Administrator labor is estimated to be \$617.76 per respondent.

For the 5 States sending electronic media, NHTSA estimates the total labor costs for packing and sending the database by looking at the average wage for Secretaries and Administrative Assistants. The BLS estimates that the average hourly wage for Secretaries and Administrator Assistants (Standard Occupational Classification #43-6014, May 2020) is \$19.43.<sup>10</sup> By using the same estimate that wages represent 61.9% of the total compensation cost of labor, NHTSA estimates the total labor hour for packing and sending the database on electronic media to be \$31.39. Therefore, the cost associated with the four hours to send the electronic media is estimated to be \$125.56 per respondent.

<sup>8</sup> See May 2020 National Occupational Employment and Wage Estimates United States, available at [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm) (accessed April 16, 2021).

<sup>9</sup> See Table 1. Employer Costs for Employee Compensation by ownership (Dec. 2020), available at <https://www.bls.gov/news.release/ecec.t01.htm> (accessed April 16, 2021).

<sup>10</sup> See May 2020 National Occupational Employment and Wage Estimates United States, available at [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm) (accessed April 16, 2021).

Combining these copying and packing and sending burden estimates for SDS, NHTSA estimates that the total burden hours associated with this collection will be 268 (248 + 20 hours) hours and total labor cost associated with the collection will be \$19,151 ( $\$617.76 \times 31$  States) for copying and \$628 ( $\$125.56 \times 5$  States) for packing and sending, for a total of \$19,779 ( $\$19,151 + \$628$ ) for the SDS protocol.

The EDT protocol burden hour estimate is based on the level of effort reported by the States that have fully implemented SDT. NHTSA estimates that in each of the next three years, there will be two new States joining the 19 States already participating in SDT program using the EDT protocol. Therefore, NHTSA estimates that there will be, on average, 23 EDT protocol States in each of the next three years. Cost and burden estimates for the EDT protocol are divided in two: A one-time implementation effort, and an annual maintenance effort. Both estimates assume a participating State already has a centralized electronic crash database. The burden for the one-time implementation of the SDT program is estimated at 200 hours. NHTSA estimates that these hours will account for work done by State IT (150hrs) and FARS program personnel (50hrs).

Once implemented, the hourly burden on States associated with SDT maintenance is estimated at five hours per year, based upon currently participating States' experiences. This time is generally used to troubleshoot any connection issues or refine mapping protocols for any data elements that have changed.

NHTSA estimates the cost for IT personnel burden hours using the Bureau of Labor Statistics' mean wage estimate for Software developers and Programmers (Standard Occupational Classification #15-1250) of \$52.86.<sup>11</sup> The Bureau of Labor Statistics estimates that for State and local government workers, wages represent 61.9% of total compensation.<sup>12</sup> Therefore, the total hourly cost associated with the IT burden hours is estimated to be \$85.40 per hour. The cost associated with the 150 hours of IT personnel labor is estimated to be \$12,810.00 per respondent. Initial SDT implementation is also expected to involve 50 hours of FARS program personnel time. There is no additional cost to the States associated with these hours because these costs may be charged to the Federal Government through the FARS cooperative agreements. Thus, total labor cost for EDT implication costs per State are estimated to be \$12,810.00.

The total annual implementation burden cost per year is estimated to be \$25,620 ( $\$12,810.00 \times 2$  new State respondents).

After initial implementation of a SDT interface, the ongoing cost burden to participating States is estimated at 5 hours per State annually, based on a survey of currently participating States. Per the loaded labor rates for State IT staff outlined above, 5 hours of work translates to an estimated total annual maintenance burden of \$427.00 per State respondent maintaining participation in the SDT program. NHTSA estimates that there will be, on average, 23 States participating in EDT program in each of the next three years. Therefore, the annual maintenance cost for the States is a total of \$9,821.00 ( $\$427.00 \times 23$  States) per year.

Combining these implementation and maintenance burden estimates for the EDT protocol, NHTSA estimates that the total burden hours associated with this collection will be 415 hours and total labor cost associated with the collection will be \$35,441.00.

The total estimated burden for SDT is 683 (268 SDS + 415 EDT) and total estimated labor cost is \$55,220 ( $\$19,779$  SDS + \$35,441 EDT).

A summary of the burden estimates is provided in the table below.

#### SDT BURDEN ESTIMATE SUMMARY

Burden type	Respondents	Burden per respondent	Total burden hours	Cost per burden hour	Cost per respondent	Total labor cost
SDS Copying .....	31	8	248	\$77.22	\$617.76	\$19,150,56
SDS Packing and sending .....	5	4	20	31.39	125.56	627.80
EDT IT Implementation .....	2	150	300	85.40	12,810.00	25,620.00
EDT Maintenance .....	23	5	115	85.40	427.00	9,821.00
	.....	.....	683	.....	.....	55,220

#### Estimated Total Annual Burden Cost: \$0.

NHTSA does not expect that participating states will incur any costs beyond the labor hour cost associated with the burden hours.

**Public Comments Invited:** You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

(b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

**Chou-Lin Chen,**

*Associate Administrator, National Center for Statistics and Analysis.*

[FR Doc. 2021-11499 Filed 5-28-21; 8:45 am]

**BILLING CODE 4910-59-P**

<sup>11</sup> See May 2020 National Occupational Employment and Wage Estimates United States, available at [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm) (accessed April 16, 2021).

<sup>12</sup> Employer Costs for Employee Compensation by ownership (Dec. 2020), available at <https://www.bls.gov/news.release/ecec.t01.htm> (accessed April 16, 2021).

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Proposed Collection; Requesting Comments on Form 8995 and Form 8995-A**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8995, Qualified Business Income Deduction Simplified Computation, and Form 8995-A, Qualified Business Income Deduction.

**DATES:** Written comments should be received on or before August 2, 2021 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number in your comment.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form and instructions should be directed to Jon Callahan, (737) 800-7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at [jon.r.callahan@irs.gov](mailto:jon.r.callahan@irs.gov).

**SUPPLEMENTARY INFORMATION:** The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

**Title:** Qualified Business Income Deduction.

**OMB Number:** 1545-2294.

**Form Number:** Form 8995, Form 8995-A, Schedules A, B, C, and D.

**Abstract:** The Tax Cuts and Jobs Act section 11011 added new IRC section 199A, which allows eligible taxpayers to deduct a percentage of qualified business income (QBI) earned by non-corporate businesses. Taxpayers use Form 8995 and Form 8995-A to figure and report the QBI deduction.

**Current Actions:** There are changes to the existing collection: (1) Form 8995-

A and Schedules A, B, C, and D were added to calculate and report the deduction, (2) the estimated number of responses were updated, and (3) the burden for Form 8995 was revised.

**Type of Review:** Revision of a currently approved collection.

**Affected Public:** Individuals or Households, Business or other for-profit organizations.

**Estimated Number of Responses:** 41,426,000.

**Estimated Time per Respondent:** 8 hours, 12 minutes.

**Estimated Total Annual Burden Hours:** 336,379,120.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 24, 2021.

**Chakinna B. Clemons,**

*Supervisory Tax Analyst.*

[FR Doc. 2021-11445 Filed 5-28-21; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF VETERANS AFFAIRS**

[OMB Control No. 2900-0034]

**Agency Information Collection Activity: Trainee Request for Leave (Chapter 31, Veteran Readiness and Employment)**

**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 August 2, 2021.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at [www.Regulations.gov](http://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](mailto:nancy.kessinger@va.gov). Please refer to "OMB Control No. 2900-0034" 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](mailto:maribel.aponte@va.gov). Please refer to "OMB Control No. 2900-0034" 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. 3110.

**Title:** Trainee Request for Leave (Chapter 31, Veteran Readiness and Employment).

**OMB Control Number:** 2900-0034.

**Type of Review:** Reinstatement without change of a previously approved collection.

**Abstract:** VA Form 28-1905h is used to gather the necessary information to determine leaves of absence under 38 U.S.C. Chapter 31. Without this information, leaves of absence may not be granted under 38 U.S.C. 3110.

**Affected Public:** Individuals and households.

**Estimated Annual Burden:** 7,500 hours.

**Estimated Average Burden per Respondent:** 15 minutes.

**Frequency of Response:** On occasion.

**Estimated Number of Respondents:** 30,000.

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. 2021-11397 Filed 5-28-21; 8:45 am]

**BILLING CODE 8320-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

### Solicitation of Nomination for Appointment to the Advisory Committee on Women Veterans

**ACTION:** Notice.

**SUMMARY:** The Department of Veterans Affairs (VA) is seeking nominations of qualified candidates to be considered for membership on the Advisory Committee on Women Veterans ("the Committee") for the 2021 membership cycle.

**DATES:** Nominations for membership on the Committee must be received by June 30, 2021, no later than 4:00 p.m., Eastern Standard Time. Packages received after this time will not be considered for the current membership cycle.

**ADDRESSES:** All nomination packages should be sent to the Advisory Committee Management Office at [vaadvisorycmte@va.gov](mailto:vaadvisorycmte@va.gov).

**SUPPLEMENTARY INFORMATION:** In carrying out the duties set forth, the Committee provides a Congressionally-mandated report to the Secretary each even-numbered year, which includes:

(1) An assessment of the needs of women Veterans with respect to compensation, health care, rehabilitation, outreach and other benefits and programs administered by VA;

(2) A review of the programs and activities of VA designed to meet such needs; and

(3) Proposing recommendations (including recommendations for administrative and legislative action) as the Committee considers appropriate. The Committee reports to the Secretary, through the Director of the Center for Women Veterans.

**Authority:** The Committee is authorized by 38 U.S.C. 542, to provide advice to the Secretary of Veterans Affairs (Secretary) on: The administration of VA's benefits and services (health care, rehabilitation benefits, compensation, outreach and other relevant programs) for women Veterans; reports and studies pertaining to women Veterans; and the needs of women Veterans. In accordance with the statute and the Committee's current charter, the majority of the membership shall consist of non-Federal employees appointed by the Secretary from the general public, serving as special government employees.

The Secretary appoints Committee members and determines the length of terms in which Committee members serve. A term of service for any member may not exceed three (3) years. However, the Secretary can reappoint members for additional terms. Each year, there are several vacancies on the Committee, as members' terms expire.

**Membership Criteria:** The Committee is currently comprised of 12 members. By statute, the Committee consists of members appointed by the Secretary from the general public, including: Representatives of women Veterans; individuals who are recognized authorities in fields pertinent to the needs of women Veterans, including the gender specific health-care needs of women Veterans; representatives of both female and male Veterans with service-connected disabilities, including at least one female Veteran with a service-connected disability and at least one male Veteran with a service-connected disability; and women Veterans who are

recently separated from service in the Armed Forces. Non-Veterans are also eligible for nomination.

The Committee meets at least two times annually, which may include a site visit to a VA field location. In accordance with Federal Travel Regulation, VA will cover travel expenses—to include per diem—for all members of the Committee, for any travel associated with official Committee duties. A copy of the Committee's most recent charter and a list of the current membership can be found at [www.va.gov/ADVISORY/](http://www.va.gov/ADVISORY/) or [www.va.gov/womenvet/](http://www.va.gov/womenvet/).

In accordance with recently revised guidance regarding the ban on lobbyists serving as members of advisory boards and commissions, Federally-registered lobbyists are prohibited from serving on Federal advisory committees in an individual capacity. Additional information regarding this issue can be found at [www.federalregister.gov/articles/2014/08/13/2014-19140/revised-guidance-on-appointment-of-lobbyists-to-federal-advisory-committees-boards-and-commissions](http://www.federalregister.gov/articles/2014/08/13/2014-19140/revised-guidance-on-appointment-of-lobbyists-to-federal-advisory-committees-boards-and-commissions).

### Requirements for Nomination Submission

Nomination packages must be typed (12-point font) and include: (1) A cover letter from the nominee and (2) a current resume that is no more than four pages in length. The cover letter must summarize: The nominee's interest in serving on the committee and contributions she/he can make to the work of the committee; any relevant Veterans' service activities she/he is currently engaged in; and the military branch affiliation and timeframe of military service (if applicable). To promote inclusion and demographic balance of membership, please include as much information related to your race, national origin, disability status, minority Veteran status, or any other factors that may give you a diverse perspective on women Veterans matters. Finally, the cover letter *must* include the nominee's complete contact information (name, address, email address and phone number); and a statement confirming that she/he is not a Federally-registered lobbyist. The resume should show professional and/or work experience and Veterans' service involvement—especially service that involves women Veterans' issues.

Self-nominations are acceptable. Any letters of nomination from organizations or other individuals *must* accompany the package when it is submitted. Letters of nomination submitted without a complete nomination package *will not* be considered. If you are submitting a

package on behalf of an individual, it *must* include all of the required components and complete contact information. Do not submit a package without the nominee's consent or awareness.

The Department makes every effort to ensure that the membership of its advisory committees is fairly balanced, in terms of points of view represented. In the review process, consideration is

given to nominees' potential to address the Committee's demographic needs (regional representation, race/ethnicity/minority representation, professional expertise, war era service, gender, former enlisted or officer status, branch of service, for example). Other considerations to promote a balanced membership include longevity of military service, significant deployment experience, ability to handle complex

issues, experience running large organizations and ability to contribute to the gender-specific health care and benefits needs of women Veterans.

Dated: May 26, 2021.

**Jelessa M. Burney,**

*Federal Advisory Committee Management Office.*

[FR Doc. 2021-11452 Filed 5-28-21; 8:45 am]

**BILLING CODE P**



# FEDERAL REGISTER

## Part II

# Department of the Interior

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Fish and Wildlife Service

50 CFR Part 18

## Marine Mammals; Incidental Take During Specified Activities; North Slope, Alaska; Proposed Rule

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 18**

[Docket No. FWS-R7-ES-2021-0037; FXES111607MRG01-212-FF07CAMM00]

RIN 1018-BF13

**Marine Mammals; Incidental Take During Specified Activities; North Slope, Alaska**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of availability of draft environmental assessment; and request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, in response to a request from the Alaska Oil and Gas Association, propose to issue regulations authorizing the nonlethal, incidental, unintentional take by harassment of small numbers of polar bears and Pacific walruses during year-round oil and gas industry activities in the Beaufort Sea (Alaska and the Outer Continental Shelf) and adjacent northern coast of Alaska. Take may result from oil and gas exploration, development, production, and transportation activities occurring for a period of 5 years. These activities are similar to those covered by the previous 5-year Beaufort Sea incidental take regulations effective from August 5, 2016, through August 5, 2021. This proposed rule would authorize take by harassment only. No lethal take would be authorized. If this rule is finalized, we will issue Letters of Authorization, upon request, for specific proposed activities in accordance with this proposed regulation. Therefore, we request comments on these proposed regulations.

**DATES:** Comments on these proposed incidental take regulations and the accompanying draft environmental assessment will be accepted on or before July 1, 2021.

**ADDRESSES:** You may view this proposed rule, the associated draft environmental assessment, comments received, and other supporting material at <http://www.regulations.gov> under Docket No. FWS-R7-ES-2021-0037, or these documents may be requested as described under **FOR FURTHER INFORMATION CONTACT**.

**INFORMATION CONTACT.** You may submit comments on the proposed rule by one of the following methods:

- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS-R7-ES-2021-0037, U.S. Fish and Wildlife Service; MS: PRB (JAO/3W); 5275

Leesburg Pike; Falls Church, VA 22041-3803.

- *Electronic submission:* Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R7-ES-2021-0037.

We will post all comments at <http://www.regulations.gov>. You may request that we withhold personal identifying information from public review; however, we cannot guarantee that we will be able to do so. See Request for Public Comments for more information.

**FOR FURTHER INFORMATION CONTACT:**

Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, MS-341, Anchorage, AK 99503, Telephone 907-786-3844, or Email: [R7mmmregulatory@fws.gov](mailto:R7mmmregulatory@fws.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

In accordance with the Marine Mammal Protection Act (MMPA) of 1972, as amended, and its implementing regulations, we, the U.S. Fish and Wildlife Service (Service or we), propose incidental take regulations (ITR) that, if finalized, would authorize the nonlethal, incidental, unintentional take of small numbers of Pacific walruses (*Odobenus rosmarus divergens*) and polar bears (*Ursus maritimus*) during oil and gas industry (hereafter referred to as "Industry") activities in the Beaufort Sea and adjacent northern coast of Alaska, not including lands within the Arctic National Wildlife Refuge, for a 5-year period. Industry operations include similar types of activities covered by the previous 5-year Beaufort Sea ITRs effective from August 5, 2016, through August 5, 2021 and found in title 50 of the Code of Federal Regulations (CFR) in part 18, subpart J.

This proposed rule is based on our draft findings that the total takings of Pacific walruses (walruses) and polar bears during proposed Industry activities will impact no more than small numbers of animals, will have a negligible impact on these species or stocks, and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses by Alaska Natives. We base our draft findings on past and proposed future monitoring of the encounters and interactions between these species and Industry; species research; oil spill risk assessments;

potential and documented Industry effects on these species; natural history and conservation status information of these species; and data reported from Alaska Native subsistence hunters. We have prepared a draft environmental assessment in conjunction with this rulemaking, which is also available for public review and comment.

The proposed regulations include permissible methods of nonlethal taking; mitigation measures to ensure that Industry activities will have the least practicable adverse impact on the species or stock, their habitat, and their availability for subsistence uses; and requirements for monitoring and reporting. Compliance with this rule, if finalized, is not expected to result in significant additional costs to Industry, and any costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations.

**Background**

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1371(a)(5)(A)) gives the Secretary of the Interior (Secretary) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens (as defined in 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) within a specified geographic region. The Secretary has delegated authority for implementation of the MMPA to the U.S. Fish and Wildlife Service. According to the MMPA, the Service shall allow this incidental taking if we find the total of such taking for a 5-year period or less:

(1) Will affect only small numbers of marine mammals of a species or population stock;

(2) will have no more than a negligible impact on such species or stocks;

(3) will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence use by Alaska Natives; and

(4) we issue regulations that set forth:

(a) Permissible methods of taking;

(b) other means of effecting the least practicable adverse impact on the species or stock and its habitat, and on the availability of such species or stock for subsistence uses; and

(c) requirements for monitoring and reporting of such taking.

If final regulations allowing such incidental taking are issued, we may then subsequently issue Letters of Authorization (LOAs), upon request, to authorize incidental take during the specified activities.

The term “take,” as defined by the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362(13)). Harassment, as defined by the MMPA, for activities other than military readiness activities or scientific research conducted by or on behalf of the Federal Government, means “any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild” (the MMPA defines this as Level A harassment); or “(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering” (the MMPA defines this as Level B harassment) (16 U.S.C. 1362(18)).

The terms “negligible impact” and “unmitigable adverse impact” are defined in title 50 of the CFR at 50 CFR 18.27 (the Service’s regulations governing small takes of marine mammals incidental to specified activities). “Negligible impact” is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. “Unmitigable adverse impact” means an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The term “small numbers”; is also defined in 50 CFR 18.27. However, we do not rely on that definition here as it conflates “small numbers” with “negligible impacts.” We recognize “small numbers” and “negligible impacts” as two separate and distinct requirements for promulgating incidental take regulations (ITRs) under the MMPA (see *Natural Res. Def. Council, Inc. v. Evans*, 232 F. Supp. 2d 1003, 1025 (N.D. Cal. 2003)). Instead, for our small numbers determination, we estimate the likely number of takes of marine mammals and evaluate if that take is small relative to the size of the species or stock.

The term “least practicable adverse impact” is not defined in the MMPA or its enacting regulations. For this proposed ITR, we ensure the least practicable adverse impact by requiring mitigation measures that are effective in reducing the impact of Industry activities but are not so restrictive as to make Industry activities unduly burdensome or impossible to undertake and complete.

In this proposed ITR, the term “Industry” includes individuals, companies, and organizations involved in exploration, development, production, extraction, processing, transportation, research, monitoring, and support services of the petroleum industry. Industry activities may result in the incidental taking of Pacific walruses and polar bears.

The MMPA does not require Industry to obtain an incidental take authorization; however, any taking that occurs without authorization is a violation of the MMPA. Since 1993, the oil and gas industry operating in the Beaufort Sea and the adjacent northern coast of Alaska has requested and we have issued ITRs for the incidental take of Pacific walruses and polar bears within a specified geographic region during specified activities. For a detailed history of our current and past Beaufort Sea ITRs, refer to the **Federal Register** at 81 FR 52276, August 5, 2016; 76 FR 47010, August 3, 2011; 71 FR 43926, August 2, 2006; and 68 FR 66744, November 28, 2003. The current regulations are codified at 50 CFR part 18, subpart J (§§ 18.121 to 18.129).

#### Summary of Current Request

On June 15, 2020, the Service received a request from the Alaska Oil and Gas Association (AOGA) on behalf of its members and other participating companies to promulgate regulations for nonlethal incidental take of small numbers of walruses and polar bears in the Beaufort Sea and adjacent northern coast of Alaska for a period of 5 years (2021–2026) (hereafter referred to as “the Request”). We received an amendment to the Request on March 9, 2021, which was deemed adequate and complete. The amended Request is available at [www.regulations.gov](http://www.regulations.gov) at Docket No. FWS-R7-ES-2021-0037.

The AOGA application requests regulations that will be applicable to the oil and gas exploration, development, and production, extraction, processing, transportation, research, monitoring, and support activities of multiple companies specified in the application. This includes AOGA member and other non-member companies that have applied for these regulations and their

subcontractors and subsidiaries that plan to conduct oil and gas operations in the specified geographic region. Members of AOGA represented in the Request include: Alyeska Pipeline Service Company, BlueCrest Energy, Inc., Chevron Corporation, ConocoPhillips Alaska, Inc. (CPAI), Eni U.S. Operating Co. Inc. (Eni Petroleum), ExxonMobil Alaska Production Inc. (ExxonMobil), Furie Operating Alaska, LLC, Glacier Oil and Gas Corporation (Glacier), Hilcorp Alaska, LLC (Hilcorp), Marathon Petroleum, Petro Star Inc., Repsol, and Shell Exploration and Production Company (Shell).

Non-AOGA companies represented in the Request include: Alaska Gasline Development Corporation (AGDC), Arctic Slope Regional Corporation (ASRC) Energy Services, Oil Search (Alaska), LLC, and Qilak LNG, Inc. If finalized, these regulations would apply only to AOGA members, the non-members noted above, their subsidiaries and subcontractors, and companies that have acquired any of the above. The activities and geographic region specified in AOGA’s request and considered in these proposed regulations are described in the following sections titled Description of Specified Activities and Description of Specified Geographic Region.

#### Description of the Proposed Regulations

The proposed regulations, if finalized, would authorize the nonlethal, incidental, unintentional take of small numbers of Pacific walruses and polar bears that may result from Industry activities based on standards set forth in the MMPA. They would not authorize or “permit” Industry activities. The Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement, the U.S. Army Corps of Engineers, and the Bureau of Land Management (BLM) are responsible for permitting activities associated with Industry activities in Federal waters and on Federal lands. The State of Alaska is responsible for permitting Industry activities on State lands and in State waters. The proposed regulations include:

- Permissible methods of nonlethal taking;
- Measures designed to ensure the least practicable adverse impact on Pacific walruses and polar bears and their habitat, and on the availability of these species or stocks for subsistence uses; and
- Requirements for monitoring and reporting.

**Description of Letters of Authorization (LOAs)**

An LOA is required to conduct activities pursuant to an ITR. Under this proposed ITR, if finalized, entities intending to conduct the specific activities described in these regulations may request a LOA for the authorized nonlethal, incidental Level B take of walruses and polar bears. Per AOGA's Request, such entities would be limited to the companies, groups, individuals specified in AOGA's Request, their subsidiaries or subcontractors, and their successors-in-interest. Requests for LOAs must be consistent with the activity descriptions and mitigation and monitoring requirements of the ITR and be received in writing at least 90 days before the activity is to begin. Requests must include (1) an operational plan for the activity; (2) a digital geospatial file of the project footprint, (3) estimates of monthly human occupancy of project area; (4) a walrus and/or polar bear interaction plan, (5) a site-specific marine mammal monitoring and mitigation plan that specifies the procedures to monitor and mitigate the effects of the activities on walruses and/or polar bears, including frequency and dates of aerial infrared (AIR) surveys if such surveys are required, and (6) Plans of Cooperation (described below). Once this information has been received, we will evaluate each request and issue the LOA if we find that the level of taking will be consistent with the findings made for the total taking allowable under the ITR. We must receive an after-action report on the monitoring and mitigation activities within 90 days after

the LOA expires. For more information on requesting and receiving an LOA, refer to 50 CFR 18.27.

**Description of Plans of Cooperation (POCs)**

A POC is a documented plan describing measures to mitigate potential conflicts between Industry activities and subsistence hunting. The circumstances under which a POC must be developed and submitted with a request for an LOA are described below.

To help ensure that Industry activities do not have an unmitigable adverse impact on the availability of the species for subsistence hunting opportunities, all applicants requesting an LOA under this ITR must provide the Service documentation of communication and coordination with Alaska Native communities potentially affected by the Industry activity and, as appropriate, with representative subsistence hunting and co-management organizations, such as the North Slope Borough, the Alaska Nannut Co-Management Council (ANCC), and Eskimo Walrus Commission (EWC), among others. If Alaska Native communities or representative subsistence hunting organizations express concerns about the potential impacts of project activities on subsistence activities, and such concerns are not resolved during this initial communication and coordination process, then a POC must be developed and submitted with the applicant's request for an LOA. In developing the POC, Industry representatives will further engage with Native communities and/or representative subsistence hunting

organizations to provide information and respond to questions and concerns. The POC must provide adequate measures to ensure that Industry activities will not have an unmitigable adverse impact on the availability of walruses and polar bears for subsistence uses.

**Description of Specified Geographic Region**

The specified geographic region covered by the requested ITR (Beaufort Sea ITR region (Figure 1)) encompasses all Beaufort Sea waters (including State waters and Outer Continental Shelf waters as defined by BOEM) east of a north-south line extending from Point Barrow (N71.39139, W156.475, BGN 1944) to the Canadian border, except for marine waters located within the Arctic National Wildlife Refuge (ANWR). The offshore boundary extends 80.5 km (50 mi) offshore. The onshore boundary includes land on the North Slope of Alaska from Point Barrow to the western boundary of the Arctic National Wildlife Refuge. The onshore boundary is 40 km (25 mi) inland. No lands or waters within the exterior boundaries of the Arctic National Wildlife Refuge (ANWR) are included in the Beaufort Sea ITR region. The geographical extent of the proposed Beaufort Sea ITR region (approximately 7.9 million hectares (ha) (~19.8 million acres (ac))) is smaller than the region covered in previous regulations (approximately 29.8 million ha (~73.6 million ac) were included in the ITR set forth via the final rule that published at 81 FR 52276, August 5, 2016).

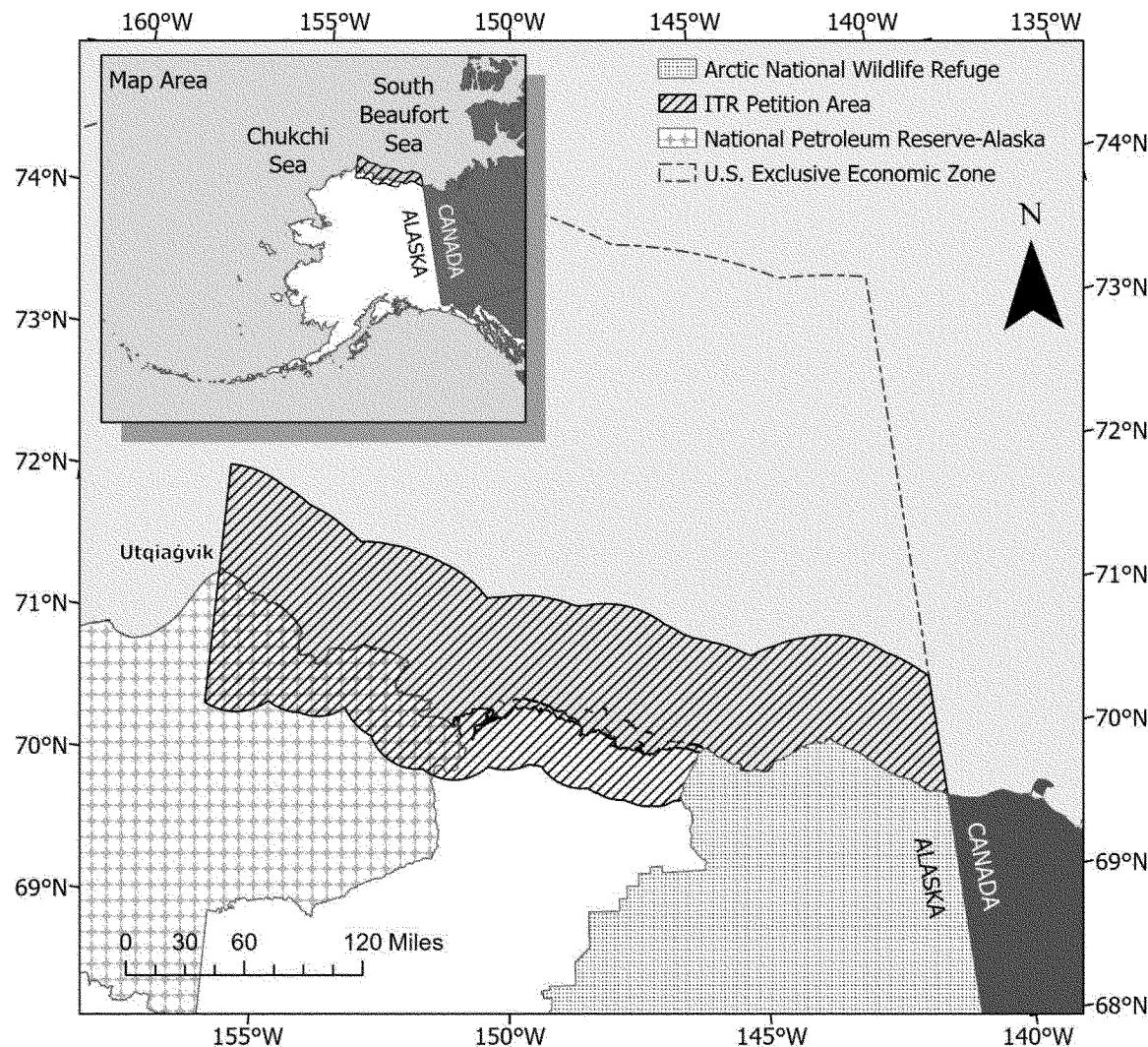


Figure 1—Map of the Beaufort Sea ITR region.

#### Description of Specified Activities

This section first summarizes the type and scale of Industry activities proposed to occur in the Beaufort Sea ITR region from 2021 to 2026 and then provides more detailed specific information on these activities. Year-round onshore and offshore Industry activities are anticipated. During the 5 years that the proposed ITR would be in place, Industry activities are expected to be generally similar in type, timing, and effect to activities evaluated under the prior ITRs. Due to the large number of variables affecting Industry activities, prediction of exact dates and locations of activities is not possible in a request for a five-year ITR. However, operators must provide specific dates and locations of proposed activities in their requests for LOAs. Requests for LOAs for activities and impacts that exceed the scope of analysis and

determinations for this proposed ITR will not be issued. Additional information is available in the AOGA Request for an ITR at: [www.regulations.gov](http://www.regulations.gov) in Docket No. FWS-R7-ES-2021-0037.

#### Exploration Activities

AOGA's request includes exploration activities specified in the Request are for the purpose of exploring subsurface geology, water depths, and seafloor conditions to help inform development and production projects may occur in those areas. Exploration survey activities include geotechnical site investigations, reflection seismic exploration, vibroseis, vertical seismic profiles, seafloor imagery collection, and offshore bathymetry collection. Exploratory drilling and development activities include onshore ice pad and road development, onshore gravel pad and road development, offshore ice road

development, and artificial island development.

The location of new exploration activities within the specified geographic region of this proposed rule will be influenced by the location of current leases as well as any new leases acquired via potential future Federal and State of Alaska oil and gas lease sales.

#### BOEM Outer Continental Shelf Lease Sales

BOEM manages oil and gas leases in the Alaska Outer Continental Shelf (OCS) region, which encompasses 242 million ha (600 million ac). Of that acreage, approximately 26 million ha (~65 million ac) are within the Beaufort Sea Planning Area. Ten lease sales have been held in this area since 1979, resulting in 147 active leases, where 32 exploratory wells were drilled. Production has occurred on one joint

Federal/State unit, with Federal oil production accounting for more than 28.7 million barrels (bbl) (1 bbl = 42 U.S. gallons or 159 liters) of oil since 2001 (BOEM 2016). Details regarding availability of future leases, locations, and acreages are not yet available, but exploration of the OCS may continue during the 2021–2016 timeframe of the proposed ITR. Lease Sale 242, previously planned in the Beaufort Sea during 2017 (BOEM 2012), was cancelled in 2015. BOEM issued a notice of intent to prepare an environmental impact statement (EIS) for the 2019 Beaufort Sea lease sale in 2018 (83 FR 57749, November 16, 2018). While the 2019–2024 Draft Proposed Program included three OCS lease sales, with one each in 2019, 2021, and 2023, but has not been approved. Information on the Alaska OCS Leasing Program can be found at: <https://www.boem.gov/about-boem/alaska-leasing-office>.

#### National Petroleum Reserve—Alaska

The BLM manages the 9.2 million ha (22.8 million ac) Natural Petroleum Reserve—Alaska (NPR-A), of which 1.3 million ha (3.2 million ac) occur within the Beaufort Sea ITR region. Lease sales have occurred regularly in the NPR-A; 15 oil and gas lease sales have been held in the NPR-A since 1999. There are currently 215 leases covering more than 607,028 ha (1.5 million ac) in the NPR-A. Current operator/ownership information is available on the BLM NPR-A website at <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/alaska>.

#### State of Alaska Lease Sales

The State of Alaska Department of Natural Resources (ADNR), Oil and Gas Division, holds annual lease sales of State lands available for oil and gas development. Lease sales are organized by planning area. Under areawide leasing, the State offers all available State acreage not currently under lease within each area annually. AOGA's Request includes activities in the State's North Slope and Beaufort Sea planning areas. Lease sale data are available on the ADNR website at: <https://dog.dnr.alaska.gov/Services/BIFAndLeaseSale>. Projected activities may include exploration, facility maintenance and construction, and operation activities.

The North Slope planning area has 1,225 tracts that lie between the NPR-A and the ANWR. The southern boundary of the North Slope sale area is the Umiat baseline. Several lease sales have been held to date in this leasing area. As of May 2020, there are 1,505 active leases on the North Slope,

encompassing 1.13 ha (2.8 million ac), and 220 active leases in the State waters of the Beaufort Sea, encompassing 244,760 ha (604,816 ac). The Beaufort Sea Planning Area encompasses a gross area of approximately 687,966 ha (1.7 million ac) divided into 572 tracts ranging in size from 210 to 2,330 ha (520 to 5,760 ac).

#### Development Activities

Industry operations during oil and gas development may include construction of roads, pipelines, waterlines, gravel pads, work camps (personnel, dining, lodging, and maintenance facilities), water production and wastewater treatment facilities, runways, and other support infrastructure. Activities associated with the development phase include transportation activities (automobile, airplane, and helicopter); installation of electronic equipment; well drilling; drill rig transport; personnel support; and demobilization, restoration, and remediation work. Industry development activities are often planned or coordinated by unit. A unit is composed of a group of leases covering all or part of an accumulation of oil and/or gas. Alaska's North Slope oil and gas field primary units include: Duck Island Unit (Endicott), Kuparuk River Unit, Milne Point Unit, Nikaitchuq Unit, Northstar Unit, Point Thomson Unit, Prudhoe Bay Unit, Badami Unit, Ooguruk Unit, Bear Tooth Unit, Pikka Unit, and the Colville River and Greater Mooses Tooth Units, which for the purposes of this ITR are combined into the Western North Slope.

#### Production Activities

North Slope production facilities occur between the oilfields of the Alpine Unit in the west to Badami and Point Thomson in the east. Production activities include building operations, oil production, oil transport, facilities, maintenance and upgrades, restoration, and remediation. Production activities are long-term and year-round activities whereas exploration and development activities are usually temporary and seasonal. Alpine and Badami are not connected to the road system and must be accessed by airstrips, barges, and seasonal ice roads. Transportation on the North Slope is by automobile, airplanes, helicopters, boats, vehicles with large, low-pressure tires called Rolligons, tracked vehicles, and snowmobiles. Aircraft, both fixed wing and helicopters, are used for movement of personnel, mail, rush-cargo, and perishable items. Most equipment and materials are transported to the North Slope by truck or barge. Much of the

barge traffic during the open-water season unloads from West Dock.

Oil pipelines extend from each developed oilfield to the Trans-Alaska Pipeline System (TAPS). The 122-cm (48-in)-diameter TAPS pipeline extends 1,287 km (800 mi) from the Prudhoe Bay oilfield to the Valdez Marine Terminal. Alyeska Pipeline Service Company conducts pipeline operations and maintenance. Access to the pipeline is primarily from established roads, such as the Spine Road and the Dalton Highway, or along the pipeline right-of-way.

#### Oil and Gas Support Activities

In addition to oil and gas production and development activities, support activities are often performed on an occasional, seasonal, or daily basis. Support activities streamline and provide direct assistance to other activities and are necessary for Industry working across the North Slope and related areas. Several support activities are defined in AOGA's request and include: Placement and maintenance of gravel pads, roads, and pipelines; supply operations that use trucks or buses, aircraft (fixed-wing or rotor-wing), hovercrafts, and barges/tugs to transport people, personal incidentals (food, mail, cargo, perishables, and personal items) between Units and facilities; pipeline inspections, maintenance dredging and screeding operations; and training for emergency response and oil spill response. Some of these activities are seasonal and performed in the winter using tundra-appropriate vehicles, such as road, pad, and pipeline development and inspections. Field and camp-specific support activities include: Construction of snow fences; corrosion and subsidence control and management; field maintenance campaigns; drilling; well work/work-overs; plugging and abandonment of existing wells; waste handling (oil field wastes or camp wastes); camp operations (housekeeping, billeting, dining, medical services); support infrastructure (warehousing and supplies, shipping and receiving, road and pad maintenance, surveying, inspection, mechanical shops, aircraft support and maintenance); emergency response services and trainings; construction within existing fields to support oil field infrastructure and crude oil extraction; and transportation services by a variety of vehicles. Additional details on each of these support activities can be found in AOGA's request.

### Specific Ongoing and Planned Activities at Existing Oil and Gas Facilities for 2021–2026

During the proposed regulatory period, exploration and development activities are anticipated to occur in the offshore and continue in the current oil field units, including those projects identified by Industry, below.

#### Badami Unit

The Badami oilfield resides between the Point Thomson Unit and the Prudhoe Bay Unit, approximately 56 km (35 mi) east of Prudhoe Bay. No permanent road connections exist from Badami to other Units, such as Prudhoe Bay or the Dalton Highway. The Badami Unit consists of approximately 34 ha (85 ac) of tundra, including approximately 9.7 km (6 mi) of established industrial duty roads connecting all infrastructure, 56 km (35 mi) of pipeline, one gravel mine site, and two gravel pads with a total of 10 wells. The oilfield consists of the following infrastructure and facilities: A central processing facility (CPF) pad, a storage pad, the Badami airstrip pad, the Badami barge landing, and a 40.2-km (25-mi)-pipeline that connects to Endicott.

During the summer, equipment and supplies are transported to Badami by contract aircraft from Merrill Field in Anchorage or by barge from the West Dock in Prudhoe Bay. During winter drilling activities, a tundra ice road is constructed near the Badami/Endicott Pipeline to tie-in to the Badami Central Production Facility pad. This winter tundra ice road is the only land connection to the Dalton Highway and the Badami Unit. Light passenger trucks, dump trucks, vacuum trucks, tractor trailers, fuel trucks, and heavy equipment (e.g., large drill rigs, well simulation equipment) travel on this road during the winter season. This road also opens as an ADNR-permitted trail during off-years where Tuckers (a brand of tracked vehicle) or tracked Steigers (a brand of tractor) use it with sleds and snow machines. Activities related to this opening would be limited to necessary resupply and routine valve station maintenance along the oil sales pipeline corridor.

Flights from Anchorage land at Badami Airfield (N70.13747, W147.0304) for a total of 32 flight legs monthly. Additionally, Badami transports personnel and equipment from Deadhorse to Badami Airfield. Approximately 24 cargo flights land at Badami Airfield annually depending on Unit activities and urgency. Badami also conducts aerial pipeline inspections. These flights are typically flown by

smaller, charter aircrafts at a minimum altitude of 305 m (1,000 ft) at ground level.

Tundra travel at Badami takes place during both the summer and winter season. Rolligons and Tuckers (off-road vehicles) are used during the summer for cargo and resupply activities but may also be used to access any pipelines and valve pads that are not located adjacent to the gravel roads. During periods of 24-hour sunlight, these vehicles may operate at any hour. Similar off-road vehicles are used during the winter season for maintenance and inspections. Temporary ice roads and ice pads may be built for the movement of heavy equipment to areas that are otherwise inaccessible for crucial maintenance and drilling. Ice road construction typically occurs in December or January; however, aside from the previously mentioned road connecting Badami to the Dalton Highway, ice roads are not routinely built for Badami. Roads are only built on an as-needed basis based on specific projects. Other activities performed during the winter season include pipeline inspections, culvert work, pigging, ground surveillance, geotechnical investigations, vertical support member (VSM) leveling, reconnaissance routes (along snow machine trails), and potentially spill response exercises. Road vehicles used include pickup trucks, vacuum trucks, loaders, box vans, excavators, and hot water trucks. Standard off-road vehicles include, but are not limited to, Tuckers, Rolligons, and snow machines.

On occasion, crew boats, landing craft, and barges may transport personnel and equipment from West Dock to Badami from July through September, pending the open-water window. Tugs and barges may also be used depending on operational needs. These trips typically go from Badami to other coastal Units, including Endicott and Point Thomson.

Badami performs emergency response and oil spill trainings during both open-water and ice-cover seasons. Smaller vessels (*i.e.*, zodiacs, aluminum work boats, air boats, and bay-class boats) typically participate in these exercises. Future classes may utilize other additional equipment or vessels as needed.

Currently, 10 wells have been drilled across the lifespan of the Badami Unit. Repair and maintenance activities on pipelines, culverts, ice roads, and pads are routine within the Badami Unit and occur year-round. Badami's current operator has received a permit from the U.S. Army Corps of Engineers to permit a new gravel pad (4.04 ha [10 ac])

located east of the Badami Barge Landing and a new gravel pit. This new pad would allow the drilling of seven more deployment wells at Badami. All new wells would be tied back to the CPF.

#### Duck Island Unit (Endicott)

Historically called the Endicott Oilfield, the Duck Island Unit is located approximately 16 km (10 mi) northeast of Prudhoe Bay. Currently, Hilcorp Alaska, LLC operates the oilfield. Endicott is the first offshore oilfield to continuously produce oil in the Arctic area of the United States and includes a variety of facilities, infrastructure, and islands. Endicott consists of 210 ha (522 ac) of land, 24 km (15 mi) of roads, 43 km (24 mi) of pipelines, two pads, and no gravel mine sites. The operations center and the processing center are situated on the 24-ha (58-ac) Main Production Island (MPI). To date, 113 wells have been drilled in efforts to develop the field, of which 73 still operate. Additionally, two satellite fields (Eider and Sag Delta North) are drilled from the Endicott MPI. Regular activities at Endicott consist of production and routine repair on the Endicott Sales Oil Pipeline, culverts, bridges, and bench bags. A significant repair on a bridge called the “Big Skookum” is expected to occur during the duration of this proposed ITR.

Endicott's facilities are connected by gravel roads and are accessible through the Dalton Highway year-round via a variety of vehicles (pickup trucks, vacuum trucks, loaders, box vans, excavators, hot water trucks). Required equipment and supplies are brought in first from Anchorage and Fairbanks, through Deadhorse, and then into Endicott. Traffic is substantial, with heavy traffic on routes between processing facilities and camps. Conversely, drill site access routes experience much less traffic with standard visits occurring twice daily (within a 24-hour period). Traffic at drill sites increases during active drilling, maintenance, or other related projects and tends to subside during normal operations. Hilcorp uses a variety of vehicles on these roads, including light passenger trucks, heavy tractor-trailer trucks, heavy equipment, and very large drill rigs. Ice roads are only built on an as-needed basis for specific projects.

Air travel via helicopter from an established pad on Endicott to Deadhorse Airport is necessary only if the access bridges are washed out (typically mid to late May to the start of June). During such instances, approximately 20–30 crew flights would occur along with cargo flights about

once a week. Hilcorp also performs maternal polar bear den surveys via aircraft.

Hilcorp performs tundra travel work during the winter season (December–May; based on the tundra opening dates). Activities involving summer tundra travel are not routine, and pipeline inspections can be performed using established roads. During the winter season, off-road vehicles (e.g., Tuckers, snow machines, or tracked utility vehicles called Argo centaurs) perform maintenance, pipeline inspections, culvert work, pigging, ground surveillance, VSM leveling, reconnaissance routes (snow machine trails), spill response exercises, and geotechnical investigations across Endicott.

Tugs and barges are used to transport fuel and cargo between Endicott, West Dock, Milne, and Northstar during the July to September period (pending the open-water period). Trips have been as many as over 80 or as few as 3 annually depending on the needs in the Unit, and since 2012, the number of trips between these fields has ranged from 6 to 30. However, a tug and barge have been historically used once a year to transport workover rigs between West Dock, Endicott, and Northstar. Endicott performs emergency response and oil spill trainings during both the open-water and ice-covered seasons. Smaller vessels (*i.e.*, zodiacs, Kiwi Noreens, bay-class boats) participate in these exercises; however, future classes may utilize other additional equipment or vessels (*e.g.*, the ARKTOS amphibious emergency escape vehicle) as needed. ARKTOS training will not be conducted during the summer.

#### Kuparuk River Unit

ConocoPhillips Alaska, Inc. operates facilities in the Kuparuk River Unit. This Unit is composed of several additional satellite oilfields (Tarn, Palm, Tabasco, West Sak, and Meltwater) containing 49 producing drill sites. Collectively, the Greater Kuparuk Area consists of approximately 1,013 ha (2,504 ac) made up of 209 km (130 mi) of gravel roads, 206 km (128 mi) of pipelines, 4 gravel mine sites, and over 73 gravel pads. A maximum of 1,200 personnel can be accommodated at the Kuparuk Operations Center and the Kuparuk Construction Camp. The camps at the Kuparuk Industrial Center are used to accommodate overflow personnel.

Kuparuk's facilities are all connected by gravel road and are accessible from the Dalton Highway year-round. ConocoPhillips utilizes a variety of vehicles on these roads, including light

passenger trucks, heavy tractor-trailer trucks, heavy equipment, and very large drill rigs. Required equipment and supplies are flown in through Deadhorse and then transported via vehicle into the Kuparuk River Unit. Traffic has been noted to be substantial, with specific arterial routes between processing facilities and camps experiencing the heaviest use. Conversely, drill site access routes experience much less traffic with standard visits to drill sites occurring at least twice daily (within a 24-hour period). Traffic at drill sites increases during drilling activities, maintenance, or other related projects and tends to subside during normal operations.

The Kuparuk River Unit uses its own private runway (Kuparuk Airstrip; N70.330708, W149.597688). Crew and personnel are transported to Kuparuk on an average of two flights per day. Flights arrive into Kuparuk only on the weekdays (Monday through Friday). Year round, approximately 34 flights per week transport crew and personnel between Kuparuk and Alpine Airport. ConocoPhillips plans to replace the passenger flights from Alpine to Kuparuk in 2021 with direct flights to both Alpine and Kuparuk from Anchorage. These flights are expected to occur five times weekly and will replace the weekly flights from Alpine to Kuparuk. Cargo is also flown into Kuparuk on personnel flights. The single exception would be for special and specific flights when the Spine road is blocked. Occasionally, a helicopter will be used to transport personnel and equipment within the Kuparuk River Unit. These flights generally occur between mid-May and mid-September and account for an estimated 50 landings annually in Kuparuk. The location and duration of these flights are variable, and helicopters could land at the Kuparuk Airstrip or remote locations on the tundra. However, only 4 of the estimated 50 landings are within 3.2 km (5 mi) of the coast.

ConocoPhillips flies surveys of remote sections of the Kuparuk crude pipeline one to two times weekly during summer months as well as during winter months when there is reduced visibility from snow cover. During winter months, maternal den surveys are also performed using aircraft with mounted AIR cameras. Off-road vehicles (such as Rolligons and Tuckers) are used for maintenance and inspection of pipelines and power poles that are not located adjacent to the gravel roads. These vehicles operate near the road (152 m [500 ft]) and may operate for 24 hours a day during summer months. During winter months, temporary ice

roads and pads are built to move heavy equipment to areas that may be inaccessible. Winter tundra travel distances average approximately 1,931 km (1,200 mi) with ice roads averaging approximately 17.7 km (11 mi) and may occur at any hour of the day. Dredging and screeding occur annually to the extent necessary for safety, continuation of seawater flow, and dock stability at the Kuparuk saltwater treatment plant intake and at Oliktok dock. Dredging occurs within a 1.5-ha (3.7-ac) area, and screeding occurs within a 1-ha (2.5-ac) area. Operations are conducted during the open-water season (May to October annually). Removed material from screeding and dredging is deposited in upland areas above the high tide, such as along the Oliktok causeway and saltwater treatment plant (STP) pad. ConocoPhillips removes approximately 0.6 to 1.1 m (2 to 3.5 ft) of sediment per year. Dredging activities typically last for 21 days, and screeding activities typically last 12 days annually. Boats are also used to perform routine maintenance as needed on the STP outfalls and inlets. ConocoPhillips infrequently has marine vessel traffic at the Oliktok Dock.

ConocoPhillips performs emergency response and oil spill trainings during both open-water and ice-cover seasons. Smaller vessels (*i.e.*, zodiacs, aluminum work boats, air boats, and bay-class boats) typically participate in these exercises. Future classes may utilize other additional equipment or vessels as needed.

The Willow Development Project, which is described in full in *Planned Activities at New Oil and Gas Facilities for 2021–2026*, would lead to increased activity through the Kuparuk River Unit. Prefabricated modules would be transported through the Unit. Module transportation involves an increase in road, aircraft, and vessel traffic resulting in the need for gravel road and gravel pad modifications, ice road and ice pad construction, and sea floor screeding. During the 2023 summer season, gravel hauling and placement to modify existing roads and pads used in support of the Willow Development would take place. An existing 12-acre gravel pad located 13.2 km (2 mi) south of the Oliktok Dock would require the addition of 33,411 cubic m (43,700 cubic yd) of gravel, increasing pad thickness to support the weight of the modules during staging. However, this addition of gravel would not impact the current footprint of the pad.

Additionally, ConocoPhillips plans to widen six road curves and add four 0.2-ha (0.5-ac) pullouts between the Oliktok Dock and Drill Site 2P as well as

increase the thickness of the 3.2-km (2-mi) gravel road from the Oliktok Dock to the staging pad—requiring approximately 30,811 cubic m (40,300 yd) of gravel and resulting in an increase in footprint of the gravel road by <0.4 ha (<0.1 ac). Twelve culverts are estimated to be extended within this part of the gravel road to accommodate the additional thickness (approximately five culverts per mile). This would yield a new gravel footprint with an additional 2 ha (5.0 ac) and 90,752 cubic m (118,700 cubic yd). In 2025, a 6.1-ha (15-ac) ice pad, for camp placement, and an ice road for module transportation, would be constructed in association with the Willow Project. The planned location is near Drill Site 2P, over 32.2 km (20 mi) away from the coastline.

An increase in road traffic to Kuparuk is expected to begin in 2023 and continue into the summer of 2026. Activities would mostly consist of the transportation of freight, equipment, and support crews between Oliktok Point, the Kuparuk Airport, and the NPR-A. The number of weekly flights will also increase with an average of 6 additional weekly flights in 2023, 4 additional flights per week in 2024, 14 additional flights per week in 2025, and 4 additional flights per week in 2026. Eight barges would deliver the prefabricated modules and bulk material to Oliktok Dock using existing and regularly used marine transportation routes in the summer of 2024 and 2026.

Due to the current depths of water at the Oliktok Dock (2.4 m [8 ft]), lightering barges (barges that transfer cargo between vessels to reduce a vessel's draft) would be used to support the delivery of large modules to the Dock. The location of the lightering transfer would be approximately 3.7 km (2.3 mi) north of Oliktok Dock in 3.05 m (10 ft) of water. Screeing operations would occur during the summer open-water season 2022–2024 and 2026 starting mid-July and take approximately one week to complete. The activities would impact an area of 3.9 ha (9.6 ac) and an additional hectare (2.5 ac) in front of the Oliktok Dock to facilitate the unloading of the lightering barges. Bathymetry measurements would be taken after to confirm the appropriate conditions of the scoured seafloor surface.

#### Milne Point Unit

The Milne Point Unit is located 56 km (35 mi) northwest of Prudhoe Bay, producing from three main pools, including Kuparuk, Schrader Bluff, and Sag River. The total development area of Milne Point is 182 ha (450 ac), including 80 ha (198 ac) of 14 gravel

pads, 54 km (33 mi) of gravel roads and mines, 161 km (100 mi) of pipelines, and over 330 wells.

Milne Point's facilities are connected by gravel roads and are accessible by the Dalton Highway year-round via a variety of vehicles (pickup trucks, vacuum trucks, loaders, box vans, excavators, hot water trucks). Required equipment and supplies are brought in first from Anchorage and Fairbanks, through Deadhorse, and then into the Milne Point Unit. Arterial roads between processing facilities and camps experience heavy traffic use. Conversely, drill site access routes experience much less traffic, with standard visits to drill sites occurring twice daily (within a 24-hour period). Traffic at drill sites increases during drilling activities, maintenance, or other related projects and tends to subside during normal operations. Industry uses a variety of vehicles on these roads, including light passenger trucks, heavy tractor-trailer trucks, heavy equipment, and very large drill rigs.

Air travel via helicopter from an established pad (N70.453268, W149.447530) to Deadhorse Airport is necessary only if the access bridges are washed out (typically mid to late May to the start of June). During such instances, approximately 20–30 crew flights would occur, along with cargo flights, about once a week. Hilcorp also performs maternal polar bear den surveys via aircraft.

Hilcorp uses off-road vehicles (Rolligons and Tuckers) for tundra travel during summer months to access any pipelines and power poles not found adjacent to the gravel roads. During the winter seasons, temporary ice roads and ice pads are built as needed across the Unit to move heavy equipment to areas otherwise inaccessible. Hilcorp also uses their off-road vehicles (Tuckers, snow machines, and Argo centaurs) during the winter to perform maintenance and inspections. Additionally, road vehicles (pickup trucks, vacuum trucks, loaders, box vans, excavators, and hot water trucks) are used to perform pipeline inspections, culvert work, pigging, ground surveillance, VSM leveling, reconnaissance routes (snow machine trails), potential spill response exercises, and geotechnical investigations.

There are 14 pads and 2 gravel mine sites within the Milne Point Unit. Twenty-eight new wells are expected to be drilled over the next 7 years. Repair activities are routine at Milne Point and occur on pipelines, culverts, ice roads, and pads. Hilcorp also has plans to continue development on Milne Point

and will be running two to three more drilling rigs over the next 5 years—requiring several pad expansions to support them. Hilcorp plans to expand six pads, including: S Pad (4.5 ha [11 ac]), I Pad (0.81 ha [2 ac]), L Pad (0.81 ha [2 ac]), Moose Pad (0.81 ha [2 ac]), B Pad (2.1 ha [5.3 ac]), and E Pad (0.4 ha [1 ac]). Additionally, Hilcorp's proposed Raven Pad is projected to be built in 2021 between the L and F Pads. This pad will be 12.1 ha (30 ac) and contain various facilities, pipelines, tie-ins, a new pipeline/VSM along existing routes connecting F Pad to CFP and 45 wells.

Hilcorp is also planning to drill at least 28 new wells with a potential for more over the period of the proposed ITR. New facilities will be installed for polymer injections, flowlines for new wells, pipelines, camps, tanks, and main facility improvements. This will require the development of new gravel pits for mining. Some of the new facilities planned to be built include: Upgrades to Moose pad; F Pad Polymer facility installation and startup; 2020 shutdown for A-Train process vessel inspections and upgrades; LM2500 turbine overhaul completion; Raven Pad design and civil work; S Pad facility future expansion; S Pad polymer engineering and procurement; diesel to slop oil tank conversion; and I Pad redevelopment. Repair activities will be routinely performed on pipelines, culverts, ice roads, and pads. Power generation and infrastructure at L Pad and polymer injection facilities are also planned on Moose Pad, F Pad, J Pad, and L Pad.

Hilcorp plans to expand the size of the Milne mine site up to 9 ha (22.37 ac). Approximately 6.3 ha (15.15 ac) will be mined for gravel. Overburden store will require about 1 ha (2.5 ac) and will be surrounded by a 1.3-ha (3.4-ac) buffer. Around 0.5 ha (1.32 ac) will be used to expand the Dalton Highway. The Ugnu Mine Site E, located approximately 8 km (5 mi) southeast of Oliktok Point and 3.2 km (2 mi) south of Simpson Lagoon, will also be expanded during the 2021–2026 proposed ITR. Hilcorp's planned expansion for the new cell is approximately 259 m long by 274 m wide (850 ft long by 900 ft wide) or 7.1 ha (17.56 ac). This would produce an estimated 434,267 cubic m (568,000 cubic yd) of overburden including a 20 percent swell factor, and approximately 764,554 cubic m (1,000,000 cubic yd) of gravel. The footprint of the Phase I Material Site is expected to be 6.5 ha (16 ac). Overburden storage, a thermal barrier, and access road would require approximately 4.2 ha (10.3 ac). The final

site layout will be dependent on gravel needs.

Marine vessels (specifically crew boats) are used to transport workers from West Dock to Milne Point if bridges are washed out. Additionally, vessels (tugs/barges) are used to transport fuel and cargo between Endicott, West Dock, Milne Point, and Northstar from July to September. While the frequency of these trips is dependent on operational needs in a given year, they are typically sparse. Hilcorp performs several emergency response and oil spill trainings throughout the year during both the open-water and ice-covered season. Smaller vessels (*i.e.*, zodiacs, Kiwi Noreens, bay-class boats) typically participate in these exercises; however, future classes may utilize other additional equipment or vessels (*e.g.*, the ARKTOS amphibious emergency escape vehicle) as needed. ARKTOS training will not be conducted during the summer, though Hilcorp notes that some variation in activities and equipment can be expected.

#### Nikaitchuq Unit

Eni U.S. Operating Co., Inc., is the 100 percent working interest owner and operator of the Nikaitchuq Unit. The Nikaitchuq Unit includes the following infrastructure: Oliktok Production Pad (OPP), Spy Island Drill site (SID), Nikaitchuq Operations Center (NOC), a subsea pipeline bundle, an onshore crude oil transmission pipeline (COTP), and an onshore pad that ties into the Kuparuk Pipeline (known as KPP). Currently, the SID includes 19 production wells, one exploration well on a Federal offshore lease, 14 injection wells, one Class-1 disposal well, and two shallow water wells. The OPP includes 12 production wells, eight injection wells, three source water wells, one Class-1 disposal well, and two shallow water wells.

Road access in the Nikaitchuq Unit for the OPP, NOC, and KPP are through connected gravel roads from the Dalton Highway year-round and maintained by Kuparuk. Equipment and cargo are brought in from Anchorage and Fairbanks after a stopover in Deadhorse. Traffic levels vary depending on ongoing activities but do not change significantly with time of year.

Crew and cargo are primarily transported using commercial flights to Deadhorse and then by vehicle. A helicopter may be used for transportation of personnel, the delivery and movement of supplies and equipment from Deadhorse when the Kuparuk Bridge is unavailable, or in the event of a medical emergency; however,

these flights are infrequent. Eni utilizes off-road vehicles (Rolligons and other track vehicles) for both the summer and winter seasons for tundra travel; however, tundra travel is infrequent. Primarily, these activities would occur when access to the COTP between OPP and KPP is being inspected or under maintenance. Eni utilizes off-road vehicles during winter to conduct maintenance and inspections on COTP and to transport personnel, equipment, and supplies between the OPP and SID during periods where a sea ice road between the two locations is being constructed. Until the sea ice road is completed, vehicles travel by a single snow trail (approximately 6.8 km [4.25 mi]).

Two to three ice roads are constructed within the Nikaitchuq Unit annually. These ice roads are typically around 6.8 km (4.25 mi) long and 18.3 m (60 ft) wide. Traffic occurs at all hours, consisting of a variety of light vehicles, such as pickup trucks and SUVs, high-capacity personnel transport vehicles (busses), ice road construction equipment (road graders, water tankers, snow blowers, front end loaders, and dump trucks), vacuum trucks, and tractor trailers. To build the sea ice road, Eni harvests ice chips from Lake K-304 after constructing a 0.3-km (0.2-mi) long, 9.1-m (30-ft) wide tundra ice road. In the past, a short tundra ice road was also constructed and used to access a lake to obtain water for maintenance of a sea ice road, and such an ice road may be used in the future.

Maintenance activities, such as gravel and gravel bag placement along the subsea pipeline, may occur as needed. Routine screeding is generally performed near barge landings at OPP and SID. Dredging is also possible in this area, although not likely. Hovercrafts are used to transport both cargo and personnel year round but generally occur daily between Oliktok Point and SID during October through January and May through July. Crew boats with passengers, tugs, and barges are used to transport cargo from Oliktok Point to the SID daily during open-water months (July through September) as needed. Eni also performs emergency response and oil spill trainings during both open-water and ice seasons.

#### Northstar Unit

The Northstar Unit is made up of a 15,360-ha (38,400-ac) reservoir, and Hilcorp Alaska, Inc. currently operates it. Northstar is an artificial island located approximately 6 km (4 mi) northwest of Point McIntyre and 10 km (6 mi) from Prudhoe Bay. The water depth surrounding the island is

approximately 11.9 m (39 ft) deep. Thirty wells have been drilled to develop Northstar, of which 23 are still operable. A buried subsea pipeline (58 km [36 mi] long) connects the facilities from Northstar to the Prudhoe Bay oilfield. Access to the island is through helicopter, hovercraft, boat, tucker, and vehicle (only during the winter ice road season). Routine activities include maintenance and bench/block repairs on culvert, road, and pipelines.

There are no established roads on Northstar Island. Loaders, cranes, and a telescopic material handler are used to move cargo and equipment. Hilcorp exclusively uses helicopter for all aircraft operations around the Northstar Unit, with an estimated 800 landings per year. Crew and cargo flights travel daily from May to January to Northstar Island from Deadhorse Airport. Sling-loading equipment and supplies may also occur from May through December. Pipeline inspections via aircraft are performed once weekly—generally with no landings. However, once per quarter, the helicopter lands to inspect the end of the pipeline where it enters the water (N70.404220, W148.692130).

Only winter tundra travel occurs at Northstar. Hilcorp typically builds several unimproved ice trails to Northstar, including a trail along the pipeline corridor from the valve pad near the Dew Line site to Northstar (9.5 km [5.93 mi]); a trail from West Dock to the pipeline shore crossing, grounded ice along the coastline (7.8 km [4.82 mi]); two unimproved ice road paths from the hovercraft tent at the dockhead; one trail under the West Dock Causeway (WDC) bridge to well pad DH3 (1.4 km [0.86 mi]); and a trail around West Dock to intersect the main ice road north of the STP (4.6 km [2.85 mi]). Hilcorp may also construct any number of shorter trails into undisturbed areas to avoid unstable/unsafe areas throughout the ice season. These detours may be constructed after March 1st due to safety considerations and may deviate approximately 23–46 m (75–150 ft) from the original road or trail.

Hilcorp typically constructs an approximately 11.7-km (7.3-mi) long ice road each year between Northstar and Prudhoe Bay (specifically West Dock) to allow for the transportation of personnel, equipment, materials, and supplies. This ice road generally allows standard vehicles (sport-utility vehicles (SUVs), pickup trucks, buses, other trucks) to transport crew and equipment to and from the island; however, Hilcorp may elect to construct an ice trail that supports only light-weight

vehicles depending on operational needs and weather conditions.

During December or January before ice roads are built, Tucker tracked vehicles transport cargo and crew daily. During ice road construction, work will occur for 24 hours a day, 7 days a week, and is stopped only when unsafe conditions are presented (e.g., high winds, extremely low temperatures). Ice road construction typically begins around January 1st when the ice is considered thick enough (minimum of 61 cm [24 in]) and is typically completed within 45 days of the start date.

Once the ice road is built, tractor-trailer trucks transport freight, chemicals for resupplies (occurs every 2 weeks using 10 truckloads), diesel, and other equipment. Additional personnel and smaller freight travel multiple times a day in light passenger traffic buses and pickup trucks. A grader and snow blower maintain the ice road daily, and in the event of cracks in the ice road, a loader may be used. Tucker tracked vehicles and hovercraft are used beginning mid-May as ice becomes unstable, then, as weather warms, boats and helicopters are used. Hilcorp uses hovercraft daily between West Dock and Northstar Island to transport crew and cargo (October through January and May through July) when broken-ice conditions are present. Crew boats have also been used to carry crew and cargo daily from West Dock to Northstar Island during open-water months (July to September) when hovercraft are not in use. Tugs and barges transport fuel and cargo from West Dock and Endicott to Northstar Island during the open-water season (July through September) and may be used once a year to transport workover rigs. There are typically between 6–30 trips per year.

Northstar performs emergency response and oil spill trainings during both open-water and ice-cover seasons. Smaller vessels (*i.e.*, zodiacs, aluminum work boats, air boats, and bay-class boats) typically participate in these exercises. Future classes may utilize other additional equipment or vessels (*e.g.*, the ARKTOS amphibious emergency escape vehicle) as needed. However, the ARKTOS training will not be conducted during the summer.

#### Oooguruk Unit

The Oooguruk Unit was originally developed in 2008 and is operated by Eni, consisting of several developments and facilities including the Oooguruk Drill site (ODS), a 13-km (8.1-mi) long pipeline bundle, and the Oooguruk Tie-in Pad (OTP). The OTP is an onshore production facility that consists of

tanks, flowlines, support infrastructure, and power generation facilities. The pipeline bundle consists of two oil pipelines, a 30.5-cm (12-in) inner diameter production flowline, and a 5.1-cm (2-in) inner diameter diesel/base oil flowline. The bundle sits about 61 m (200 ft) from the shoreline when onshore and runs about 3.8 km (2.4 mi) on vertical supports to the OTP. A 30.5-cm (12-in) product sales line enters a metering skid on the southeast side of the OTP. This metering skid represents the point where the custody of the oil is transferred to ConocoPhillips Alaska, Inc. Diesel fuels and base oil are stored at the OTP to resupply the ODS as needed.

The ODS is a manmade island located approximately 9.2 km (5.7 mi) offshore and measuring approximately 5.7 ha (14 ac) and is found approximately 12.9 km (8 mi) northwest of the OTP. The site includes living quarters with 150 beds, a helicopter landing site, various production and injection wells, and a grind and inject facility. A Nabors rig is also located on the pad and the rig is currently not in use. The ocean surrounding the island is about 3.05 m (10 ft) in depth and considered relatively shallow.

Oooguruk relies on interconnected gravel roads maintained by Kuparuk to gain access to the Dalton Highway throughout the year. Equipment and supplies travel from Anchorage and Fairbanks to the OTP through Deadhorse. The ODS is connected to the road system only when an ice road is developed and available from February to May.

Eni uses helicopters from May to January for cargo transport, which is limited to flights between the OTP and the ODS. Work personnel depart from the Nikaitchuq Unit's NOC pad; Eni estimates about 700 flights occur during the helicopter season for both crew and field personnel.

Eni occasionally utilizes off-road vehicles (*e.g.*, Rolligons and track vehicles) during the summer tundra months with activities limited to cleanup on ice roads or required maintenance of the pipeline bundle. During winter months, track vehicles transport personnel, equipment, and supplies between the OTP and ODS during the ice road construction period. The ice road is approximately 9.8-m (32-ft) wide, and traffic and activity are constant—most notably from light vehicles (pickup trucks, SUVs), high-capacity personnel transport (buses), ice road construction equipment (road graders, water tankers, snow blowers, front-end loaders, dump trucks), and well maintenance equipment (coil

tubing units, wire-line units, hot oil trucks). Eni estimates over 3,500 roundtrips occur annually.

Eni will add 2,294 cubic m (3,000 cubic yd) of gravel to facilitate a hovercraft landing zone on island east and will also conduct additional gravel maintenance at the “shoreline crossing” of the pipeline or the area where the pipeline transitions from the above-ground section to the subsea pipeline. Maintenance in these areas is necessary to replace gravel lost to erosion from ocean wave action. Additionally, Eni performs gravel placement on the subsea pipeline to offset strudel scour—pending the results of annual surveys. Island “armor” (*i.e.*, gravel bags) requires maintenance throughout the year as well.

Eni utilizes some in-water vessel traffic to transport crew and cargo from Oliktok Point to the ODS during the open-water season (typically July to September). These trips occur daily (or less if hovercraft are used).

Additionally, Eni uses tugs and barges to transport cargo from Oliktok Point to the ODS from July to September. These vessels make varying amounts of trips, from a few trips annually up to 50 trips depending on operational needs at the time.

Like the trainings performed at the Nikaitchuq Unit, Eni would also conduct emergency and oil spill response trainings throughout the proposed ITR period at various times. Trainings will be conducted during both open-water and ice-covered seasons with training exercises occurring on both the land and the water depending on current ice conditions. Further information on these trainings can be found on the submitted AOGA request for 2021–2026.

#### Point Thomson Unit

The Point Thomson Unit (PTU) is located approximately 32 km (20 mi) east of the Badami field and 96 km (60 mi) east of Deadhorse and is operated by ExxonMobil. The Unit includes the Point Thomson initial production system (IPS), Sourdough Wells, and legacy exploration sites (*i.e.* PTU 1–4, Alaska C-1, West Staines State 2 and 18–9–23). The total Point Thomson IPS area is approximately 91 ha (225 ac), including 12.4 km (7.7 mi) of gravel roads, 35 km (22 mi) of pipelines, one gravel mine site, and three gravel pads (Central, West, and C-1).

The Point Thomson IPS facilities are interconnected by gravel roads but are not connected to other oilfields or developments. Equipment and supplies are brought in via air, barge, ice road, or tundra travel primarily from Deadhorse.

Traffic on gravel roads within the PTU occurs daily with roads from Central Pad to the airstrip experiencing the heaviest use. This consistent heavy use is not influenced by time of year.

Vehicle types include light passenger trucks/vans, heavy tractor-trailer trucks, and heavy equipment usage on pads, particularly for snow removal and dust control.

Personnel and most cargo are transported to Point Thomson using aircraft departing from Deadhorse. During normal operations, an average of two to four passenger flights per week land at the Point Thomson Airport. Typically, there are 12 cargo flights per year (or one per month) that may land at Point Thomson but frequency is reduced January to April when tundra is open. Aerial pipeline inspection surveys are conducted weekly, and environmental surveys and operations typically occur for 1 to 2 weeks each summer. The environmental surveys are generally performed at remediation sites such as West Staines State 2 and 18–9–23, areas of pipeline maintenance, and tundra travel routes.

Off-road vehicles (e.g., Rolligons and track vehicles) are only during the summer tundra months for emergency purposes such as accessing the pipeline. During winter months, off-road vehicles provide access to spill response conexes, deliver cargo supplies from Deadhorse, and maintain and inspect the PTU. Tundra travel includes a route south of the pipeline from Deadhorse to Point Thomson, a route along the pipeline right-of-way (ROW), spur roads as needed between the southern route and the pipeline ROW, and a route to spill conexes totaling approximately 146.5 km (91 mi). Travel along these routes can occur at any time of day.

Temporary ice roads and pads near the Point Thomson Facility are built to move heavy equipment to areas otherwise inaccessible for maintenance and construction activities. Ice road and ice pad construction typically begins in December or January. An ice road to Point Thomson is typically needed in the event that a drilling rig needs to be mobilized and extends east from the Endicott Road, connects to the Badami facilities, and continues east along the coast to Point Thomson.

Barging usually occurs from mid-July through September. In the event additional barging operations are needed, dredging and screeding activities may occur to allow barges to dock at Point Thomson. If dredging and screeding activities are necessary, the work would take place during the open-water season and would last less than a week. ExxonMobil also performs

emergency response and oil spill trainings during the summer season. On occasion, spill response boats are used to transport operations and maintenance personnel to Badami for pipeline maintenance.

Expansion activities are expected to occur over 4 years and would consist of new facilities and new wells on the Central Pad to increase gas and condensate production. The Central Pad would require a minor expansion of only 2.8 ha (7 ac) to the southwest. Minor size increases on infield pipelines will also occur, but the facility footprint would not otherwise increase. To support this project, an annual ice road would be constructed, and summer barging activities would occur to transport a drilling rig, additional construction camps, field personnel, fuel, equipment, and other supplies or materials. Gravel would be sourced from an existing stockpile, supplemented by additional gravel volume that would be sourced offsite as necessary. Drilling of wells is expected to occur during the later years of construction, and new modular production facilities would be fabricated offsite and then delivered via sealift.

A small number of barge trips (<10 annually) are expected to deliver equipment, fuel, and supplies during the open-water season (mid-July through September) from Deadhorse and may occur at any time of day. Additional development activities are planned within PTU and are described in section *Alaska Liquefied Natural Gas Project (Alaska LNG)*.

#### Prudhoe Bay Unit

The Prudhoe Bay Unit (PBU) is the largest producing oilfield in North America and is operated by Hilcorp. The PBU includes satellite oilfields Aurora, Borealis, Midnight Sun, Polaris, and Orion. The total development area is approximately 1,778 ha (4,392 ac), including 450 km (280 mi) of gravel roads, 2,543 km (1,580 mi) of pipelines, 4 gravel mines, and over 113 gravel pads. Camp facilities such as the Prudhoe Bay Operations Center, Main Construction Camp, Base Operations Center, and Tarmac camp are also within the PBU.

PBU facilities are connected by gravel roads and can be accessed from the Dalton Highway year-round. Equipment and supplies are flown or transported over land from Anchorage and Fairbanks to Deadhorse before they are taken to the PBU over land. Traffic is constant across the PBU with arterial routes between processing facilities and camps experiencing the heaviest use while drill site access roads are traveled

far less except during active drilling, maintenance or other projects. Traffic is not influenced by the time of year. Vehicle types include light passenger trucks, heavy tractor-trailer trucks, heavy equipment, and very large drill rigs.

Personnel and cargo are transported to the PBU on regularly scheduled, commercial passenger flights through Deadhorse and then transported to camp assignments via bus. Pipeline surveys are flown every 7 days departing from CPAI's Alpine airstrip beginning the flight route at Pump Station 1 and covering a variety of routes in and around the Gathering Center 2, Flow Station 2, Central Compressor Pad, West Gas Injection, and East Sag facilities. Pipelines are also surveyed once per day from the road system using a truck-mounted forward-looking infrared camera system. Various environmental studies are also conducted using aircraft. Surveys include polar bear den detection and tundra rehabilitation and revegetation studies. Tundra environmental studies occur annually each summer in July and August with field personnel being transported to sites over an average of 4 days. Flights take off and return to Deadhorse airport, and field landings include seven tundra sites an average of 25.7 km (16 mi) from Deadhorse airport. Only four of the seven tundra landing sites are within 8 km (5 mi) of the Beaufort coast. Unmanned aerial systems (UAS) are used for subsidence, flare, stack, and facility inspections from June to September as well as annual flood surveillance in the spring. UAS depart and arrive at the same location and only fly over roads, pipeline ROWs, and/or within 1.6 km (1 mi) or line of sight of the pad.

Off-road vehicles (such as Rolligons and Tuckers) are used for maintenance and inspection activities during the summer to access pipelines and/or power poles that are not located adjacent to the gravel roads. These vehicles typically operate near the road (152 m [500 ft]) and may operate for 24 hours a day during summer months. During winter months, temporary ice roads and pads are built to move heavy equipment to areas that may be inaccessible. Winter tundra travel distances and cumulative ice road lengths average about 120.7 and 12.1 km (75 and 7.5 mi), respectively, and may occur at any hour of the day. An additional 0.8 ha (2 ac) of ice pads are constructed each winter.

West Dock is the primary marine gateway to the greater Prudhoe Bay area with users including Industry vessels, cargo ships, oil spill responders,

subsistence users, and to a lesser degree, public and commercial vessels. Routine annual maintenance dredging of the seafloor around the WDC occurs to maintain navigational access to DH2 and DH3 and to insure continued intake of seawater to the existing STP.

Approximately 15,291 cubic m (20,000 cubic yd) of material is anticipated to be dredged over 56.6 ha (140 ac); however, up to the 172,024 cubic m (225,000 cubic yd) of material is authorized to be removed in a single year. All dredged material is placed as fill on the WDC for beach replenishment and erosion protection. Some sediments are moved but remain on the seafloor as part of the screeding process. Much of the dredging work takes place during the open-water season between May and October and will be completed in less than 30 working days. Annual installation and floats, moorings, and buoys begin at the beginning of the open-water season and are removed at the end of the open-water season. Up to three buoys may be installed to each side of the breach (up to six buoys total).

During the 2021–2022 winter tundra travel period, an additional 8-km (5-mi) ice road, 0.8-ha (2-ac) ice pad, up to 8-km (5-mi) pipeline, and pad space are expected to be constructed to support I-Pad expansion totaling 12.1 ha (30 ac) for the ice road and ice pad and 8.5 ha (21 ac) for the pad space, pipeline, and VSM footprints. Other pad expansions include approximately 0.8 ha (2 ac) per year 2021–2026 at DS3–DS0 and P-Pad.

Additionally, the construction of up to a 56.7-ha (140-ac) mine site is expected. Construction will occur on a need-based, phased approach over 40 years with no more than 24.3 ha (60 ac) of gravel developed by 2026. A 4.3-km (2.7-mi) long and 24.4-m (80-ft) wide gravel access road will also be built for a total impacted area of 10.5 ha (26 ac) over one year.

#### Trans-Alaska Pipeline System (TAPS)

TAPS is a 122-cm (48-in) diameter crude oil transportation pipeline system that extends 1,287 km (800 mi) from Pump Station 1 in Prudhoe Bay Oilfield to the Valdez Marine Terminal. The lands occupied by TAPS are State-owned, and the ROWs are leased through April 2034. Alyeska Pipeline Service Company operates the pipeline ROW. Approximately 37 km (23 mi) of pipeline are located within 40 km (25 mi) of the Beaufort Sea coastline. A 238-km (148-mi) natural gas line that extends from Pump Station 1 provides support for pipeline operations and facilities. The TAPS mainline pipe ROW includes a gravel work pad and drive lane that crosses the Dalton Highway

approximately 29 km (18 mi) south of Pump Station 1.

Travel primarily occurs along established rounds, four pipeline access roads, or along the pipeline ROW work pad. Ground-based surveillance on the TAPS ROW occurs once per week throughout the year. Equipment and supplies are transported via commercial carriers on the Dalton Highway. In the summer, travel is primarily restricted to the gravel work pad and access roads. There are occasional crossings of unvegetated gravel bars to repair remote flood control structures on the Sagavanirktok River. Transport of small-volume gravel material from the active river floodplain to the TAPS work pad may occur. Vehicles used during the summer include typical highway vehicles, maintenance equipment, and off-road trucks for gravel material transport. In the winter, travel occurs in similar areas compared to summer in addition to maintenance activities, such as subsurface pipeline excavations. Short (<0.4 km, <0.25 mi) temporary ice roads and ice pads are built to move heavy equipment when necessary. Vehicles used during the winter include off-road tracked vehicles so that snow plowing on the ROW is not required. The amount of traffic is generally not influenced by the time of year.

The Deadhorse Airport is the primary hub used for personnel transport and airfreight to TAPS facilities in the northern pipeline area. Commercial and charter flights are used for personnel transport, and crew change-outs generally occur every 2 weeks. Other aviation activities include pipeline surveillance, oil spill exercise/training/response, and seasonal hydrology observations. Aerial surveillance of the pipeline occurs once each week during daylight hours throughout the year. Approximately 50 hours per year are flown within 40 km (25 mi) of the Beaufort Sea coastline.

No TAPS-related in-water activities occur in the Beaufort Sea. Instead, these activities will be limited to the Sagavanirktok River and its tributaries. In-water construction and dredging may take place occasionally, and they are generally associated with flood control structures and repairs to culverts, low water crossings, and eroded work pads. Gravel mining may also occur on dry unvegetated bars of the active floodplain or in established gravel pits. On river bars, up to a 0.9-m (3-ft) deep layer of alluvial gravel is removed when the river is low, and this layer is allowed to naturally replenish. Additional construction of flood structures may be needed to address changes in the hydrology of the Sagavanirktok River

and its tributaries during the 2021–2026 period.

#### Western North Slope—Colville River and Greater Moose's Tooth Units

The Western North Slope (WNS) consists of the CPAI's Alpine and Alpine satellite operations in the Colville River Unit (CRU) and the Greater Moose's Tooth Unit (GMTU). The Alpine reservoir covers 50,264 ha (124,204 ac), but the total developed area is approximately 153 ha (378 ac), which contains 45 km (28 mi) of gravel roads, 51.5 km (32 mi) of pipelines, and 14 gravel pads. The CRU has a combined production pad/drill site and four additional drill sites. The GMTU contains one producing drill site and a second drill site undergoing construction. Roads and pads are generally constructed during winter.

There are no permanent roads connecting WNS to industrial hubs or other oilfields. Gravel roads connect four of the five CRU drill sites. An ice road is constructed each winter to connect to the fifth CRU drill site. Gravel roads also connect the GMTU drill sites to the CRU, and gravel roads connect the two GMTU drill sites to each other. Each drill site with gravel road access is visited at least twice during a 24-hour period, depending on the weather. Drill site traffic levels increase during active drilling, maintenance, or other projects. Vehicles that use the gravel roads include light passenger trucks, heavy tractor-trailer trucks, heavy equipment, and very large drill rigs. The amount of traffic is generally not influenced by the time of year, but there may be increased amounts of traffic during the exploration season.

In the winter, off-road vehicles are used to access equipment for maintenance and inspections. Temporary ice roads and ice pads are built to move heavy equipment for maintenance and construction activities. An ice road is constructed to connect WNS to the Kuparuk oilfield (KRU) to move supplies for the rest of the year. More than 1,500 truckloads of modules, pipeline, and equipment are moved to WNS over this ice road, which is approximately 105 km (65 mi) in length. As mentioned previously, an ice road is constructed each winter to connect one of the CRU drill sites to the other CRU facilities in order to facilitate maintenance, drilling, and operations at this drill site. WNS ice roads typically operate from mid-January until late-April.

The Alpine Airstrip is a private runway that is used to transport personnel and cargo. An average of 60

to 80 personnel flights to/from the Alpine Airstrip occur each week. Within the CRU, the Alpine Airport transports personnel and supplies to and from the CRU drill site that is only connected by an ice road during the winter. There are approximately 700 cargo flights into Alpine each year. Cargo flight activity varies throughout the year with October through December being the busiest months. Aerial visual surveillance of the Alpine crude pipeline is conducted weekly for sections of the pipeline that are not accessible either by road or during winter months. These aerial surveillance inspections generally occur one to two times each week, and they average between two and four total flight hours each week. CPAI also uses aircraft to conduct environmental studies, including polar den detection surveys in the winter and caribou and bird surveys in the summer. These environmental surveys cover approximately 1,287 linear km (800 linear mi) over the CRU each year. In the summer from mid-May to mid-September, CPAI uses helicopters to transport personnel and equipment within the CRU (approximately 2,000 flights) and GMTU (approximately 650 flights).

There are no offshore or coastal facilities in the CRU. However, there are multiple bridges in the CRU and GMTU that required pilings which were driven into stream/riverbeds during construction. In-water activities may occur during emergency and oil spill response training exercises. During the ice-covered periods, training exercises may involve using equipment to detect, contain, and recover oil on and under ice. During the open-water season, air boats, shallow-draft jet boats and possibly other vessels may be used in the Nigliq Channel, the Colville River Main Channel, and other channels and tributaries connected to the Colville River. Vessels may occasionally enter the nearshore Beaufort Sea to transit between channels and/or tributaries of the Colville River Delta.

In the 2021–2026 period, two 4-ha (10-ac) multiseason ice pads would be located in the WNS in order to support the Willow Development construction in the NPR-A. Possible expansion activities for this period may include small pad expansions or new pads (<6.1 ha (15 ac)) to accommodate additional drilling and development of small pads and gravel roads to accommodate additional facilities and operational needs. Two gravel mine sources in the Tijmiaqsiugvik area have been permitted to supply gravel for the Willow Development. The new gravel

source would be accessed seasonally by an ice road. Increases in the amount of traffic within WNS are expected from 2023 to 2026. The increase in traffic is due to the transport of freight, equipment, and support crew between the Willow Development, the Oliktok Dock, and the Kuparuk Airport. The planned Willow Development is projected to add several flights to/from the Alpine Airstrip from 2021 to 2026. It is estimated that the number of annual flights may increase by a range of 49 to 122 flights. There are plans to replace passenger flights connecting Alpine and Kuparuk oilfields in 2021 with direct flights to these oilfields. This change would reduce the number of connector flights between these oilfields from 18 flights to 5 flights each week.

#### *Planned Activities at New Oil and Gas Facilities for 2021–2026*

The AOGA's submitted request includes several new oil and gas facilities being planned for leases obtained by Industry (see the section about *Lease Sales*) in which development and exploration activities would occur. The information discussed below was provided by AOGA and is the best available information at the time AOGA's request was finalized.

#### *Bear Tooth Unit (Willow)*

Located 45.1 km (28 mi) from Alpine, the Willow Development is currently owned and operated by ConocoPhillips Alaska, Inc. Willow is found in the Bear Tooth Unit (BTU) located within the northeastern area of the NPR-A. Discovered in 2016 after the drilling of the Tijmiaq 2 and 6 wells, Willow is estimated to contain between 400–750 million barrels of oil and has the potential to produce over 100,000 barrels of oil per day. The Willow Project would require the development of several different types of infrastructure, including gravel roads, airstrips, ice roads, and ice pads, that would benefit seismic surveys, drilling, operations, production, pile-driving, dredging, and construction.

ConocoPhillips plans to develop the hydrocarbon resources within the BTU during the 2021–2026 timeline under this ITR. The proposed development at Willow would consist of five drill sites along with associated infrastructure, including flowlines, a CPF, a personnel camp, an airstrip, a sales oil pipeline, and various roads across the area. Additionally, Willow would require the development of a new gravel mine site and would use sea lifts for large modules at Oliktok Dock requiring transportation over gravel and ice roads in the winter.

Access to the Willow Development project area to Alpine, Kuparuk, or Deadhorse would be available by ground transportation along ice roads. Additionally, access to the Alpine Unit would occur by gravel road. The Development Plan requires 61.5 km (38.2 mi) of gravel road and seven bridges to connect the five drill sites to the Greater Mooses Tooth 2 (GMT2). The Willow Development would also require approximately 59.7 km (37.1 mi) or 104 ha (257.2 ac) of gravel roads to the Willow Central Processing Facility (WCF), the WCF to the Greater Mooses Tooth 2 (GMT2), to water sources, and to airstrip access roads. The gravel needed for any gravel-based development would be mined from a newly developed gravel mine site and then placed for the appropriate infrastructure during winter for the first 3 to 4 years of the construction.

Gravel mining and placement would occur almost exclusively in the winter season. Prepacked snow and ice road construction will be developed to access the gravel mine site, the gravel road, and pad locations in December and January yearly from 2021 to 2024, and again in 2026. Ice roads would be available for use by February 1 annually. The Willow plan would require gravel for several facilities, including Bear Tooth 1 (BT1), Bear Tooth 2 (BT2), Bear Tooth 3 (BT3), Bear Tooth 4 (BT4), roads, WCF, Willow Operations Center (WOC), and the airstrip. Additionally, an all-season gravel road would be present from the GMT2 development and extend southwest towards the Willow Development area. This access road would end at BT3, located west from the WCF, WOC, and the airstrip. More gravel roads are planned to extend to the north, connecting BT1, BT2, and BT4. An infield road at BT3 would provide a water-source access road that would extend to the east to a freshwater reservoir access pad and water intake system developed by ConocoPhillips. Further east from the planned airstrip, an infield road is planned to extend north to BT1, continue north to BT2, and end at BT4. This road would intersect Judy (Iqalliqpik) Creek and Fish (Uvlutuug) Creek at several points. Culvert locations would be identified and installed during the first construction season prior to breakup. Gravel pads would be developed before on-pad facilities are constructed. Gravel conditions and re-compaction would occur later in the year.

The Willow area is expected to have year-round aircraft operations and access from the Alpine Unit, Kuparuk Unit, Deadhorse, Anchorage, Fairbanks, and several other locations. Aircraft

would primarily be used for support activities and transporting workers, materials, equipment, and waste from the Willow Development to Fairbanks, Anchorage, Kuparuk, and Deadhorse. To support these operations, a 1,890-m (6,200-ft)-long gravel airstrip would be developed and is expected to be located near the WOC. Aircraft flight paths would be directed to the north of Nuiqsut. The construction for the airstrip is expected to begin during the 2021 winter season and completed by the summer of 2022. Before its completion, ConocoPhillips would utilize the airstrip at the Colville Delta 1 at the Alpine Central Processing Facility. After completion of the airstrip, helicopters would be used to support various projects within the Willow Development starting in 2023. An estimated 82 helicopter flights would occur annually during 2023–2026 between April and August. After the development of planned gravel roads and during activities such as drilling and related operations, helicopters would be limited to support environmental monitoring and spill response support. ConocoPhillips estimates that 50 helicopter trips to and from Alpine would occur in 2021, and 25 helicopter trips would occur from Alpine in 2022.

ConocoPhillips plans to develop and utilize ice roads to support gravel infrastructure and pipeline construction to access lakes and gravel sources and use separate ice roads for construction and general traffic due to safety considerations regarding traffic frequency and equipment size. The ice road used to travel to the Willow Development is estimated to be shorter in length than previously built ice roads at Kuparuk and Alpine, and ConocoPhillips expects the ice road use season at Willow to be approximately 90 days, from January 25 to April 25. In the winter ice road season (February through April), material resupply and waste would be transported to Kuparuk and to the rest of the North Slope gravel road system via the annual Alpine Resupply Ice Road. Additionally, during drilling and operations, there would be seasonal ground access from Willow to Deadhorse and Kuparuk from the annually constructed Alpine Resupply Ice Road and then to the Alpine and GMT gravel roads.

Seasonal ice roads would be developed and used during construction at Willow's gravel mine, bridge crossings, horizontal directional drilling crossing, and other locations as needed. A 4-ha (10-ac) multiseason ice pad would be developed and used throughout construction. This ice pad

would be constructed near the WOC from 2021 to 2022 and rotated on an annual basis.

Pipelines for the Willow Development would be installed during the winter season from ice roads. Following VSMs and horizontal support members (HSMs) assembly and installation; pipelines would be placed, welded, tested, and installed on pipe saddles on top of the HSMs. ConocoPhillips expects that the Colville River horizontal directional drilling pipeline crossing would be completed during the 2022 winter season. Pipeline installation would take approximately 1 to 3 years per pipeline, depending on several parameters such as pipeline length and location.

In 2024 at BT1, a drill rig would be mobilized, and drilling would begin prior to the WCF and drill site facilities being completed. ConocoPhillips estimates about 18 to 24 months of "pre-drilling" activities to occur, allowing the WCF to be commissioned immediately after its construction. Wells would be drilled consecutively from BT1, BT3, and BT2; however, the timing and order is based upon drill rig availability and economic decision-making. A second drilling rig may be utilized during the drilling phase of the Willow Development as well. ConocoPhillips estimates that drilling would occur year-round through 2030, with approximately 20 to 30 days of drilling per well.

Post-drilling phase and WCF startup, standard production and operation activities would take place. ConocoPhillips estimates that production would begin in the fourth quarter of 2025 with well maintenance operations occurring intermittently throughout the oilfield's lifespan.

ConocoPhillips plans to develop several bridges, installed via in-water pile-driving at Judy Creek, Fish Creek, Judy Creek Kayyaaq, Willow Creek 2, and Willow Creek 4. Pilings would be located above the ordinary high-water level and consist of sheet pile abutments done in sets of four, positioned approximately 12.2 to 21.3 m (40 to 70 ft) apart. Crossings over Willow Creek 4a and Willow Creek 8 would be constructed as single-span bridges, approximately 15.2 to 18.3 m (50 to 60 ft) apart using sheet pile abutments. Additionally, bridges would be constructed during the winter season from ice roads and pads. Screeing activities and marine traffic for the Willow project may also take place at the Oliktok Dock in the KRU.

#### Liberty Drilling and Production Island

The Liberty reservoir is located in Federal waters in Foggy Island Bay about 13 km (8 mi) east of the Endicott Satellite Drilling Island (SDI). Hilcorp plans to build a gravel island situated over the reservoir with a full on-island processing facility (similar to Northstar). The Liberty pipeline includes an offshore segment that would be buried in the seafloor for approximately 9.7 km (6 mi), and an onshore, VSM-mounted segment extending from the shoreline approximately 3.2 km (2 mi) to the Badami tie-in. Onshore infrastructure would include a gravel mine site, a 0.29-ha (0.71-ac) gravel pad at the Badami pipeline tie-in and a 6.1-ha (0.15-ac) gravel pad to allow for winter season ice road crossing. Environmental, archeological, and geotechnical work activities would take place to support the development and help inform decision-making. Development of the Liberty Island would include impact driving for conductor pipes/foundation pipes, vibratory drilling for conductor pipes, and vibratory and impact driving for sheet pile.

Road vehicles would use the Alaska Highway System to transport material and equipment from supply points in Fairbanks, Anchorage, or outside of Alaska to the supply hub of Deadhorse. Additionally, North Slope gravel roads would be used for transport from Deadhorse to the Endicott SDI. Existing gravel roads within the Endicott field between the MPI and the SDI would also be used to support the project.

During the winter seasons, workers would access the Liberty Island area from existing facilities via gravel roads and the ice road system. Construction vehicles would be staged at the construction sites, including the gravel mine. Access to the Liberty Drilling and Production Island (LDPI) by surface transportation is limited by periods when ice roads can be constructed and used. Additionally, surface transportation to the onshore pipeline can take place in winter on ice roads and can also occur in summer by approved tundra travel vehicles (e.g., Rolligons). The highest volume of traffic would occur during gravel hauls to create the LDPI. Gravel hauling to the island would require approximately 14 trucks working for 76 days (BOEM 2018). An estimated 21,400 surface vehicle trips would occur per season during island construction.

In general, ice roads would be used in the winter seasons, marine vessels would be used in the summer seasons, helicopters would be used across both seasons, and hovercraft (if necessary)

would be used during the shoulder season when ice roads and open water are not available. By spring breakup, all materials needed to support the ongoing construction would have been transported over the ice road system. Additionally, personnel would access the island by helicopter (likely a Bell 212) or if necessary, via hovercraft. During the open-water season, continued use of helicopter and hovercraft would be utilized to transport personnel—however, crew boats may also be used.

Construction materials and supplies would be mobilized to the site by barge from West Dock or Endicott. Larger barges and tugs can over-winter in the Prudhoe Bay area and travel to the LDPI in the open-water season, generally being chartered on a seasonal basis or long-term contract. Vessels would include coastal and ocean-going barges and tugs to move large modules and equipment and smaller vessels to move personnel, supplies, tools, and smaller equipment. Barge traffic consisting of large ocean-going barges originating from Dutch Harbor is likely to consist of one-to-two vessels, approximately two-to-five times per year during construction, and only one trip every 5 years during operations. During the first 2 years following LDPI construction, hovercraft may make up to three trips per day from Endicott SDI to LDPI. After those 2 years, hovercraft may make up to two trips per day from Endicott SDI to LDPI (approximately 11.3 km [7 mi]).

Air operations are often limited by weather conditions and visibility. In general, air access would be used for movement of personnel and foodstuffs and for movement of supplies or equipment when necessary. Fixed-wing aircraft may be used on an as-needed basis for purposes of spill response (spill delineation) and aerial reconnaissance of anomalous conditions or unless otherwise required by regulatory authority. Helicopter use is planned for re-supply during the broken-ice seasons and access for maintenance and inspection of the onshore pipeline system. In the period between completion of hydro-testing and facilities startup, an estimated one-to-two helicopter flights per week are also expected for several weeks for personnel access and to transport equipment to the tie-in area. Typically, air traffic routing is as direct as possible from departure locations such as the SDI, West Dock, or Deadhorse to the LDPI, with routes and altitude adjusted to accommodate weather, other air traffic, and subsistence activities. Hilcorp would minimize potential disturbance to mammals from helicopter

flights to support LDPI construction by limiting the flights to an established corridor from the LPDI to the mainland and except during landing and takeoff, would maintain a minimum altitude of 457 m (1,500 ft) above ground level (AGL) unless inclement weather requires deviation. Equipment located at the pipeline tie-in location and the pipeline shore landing would be accessed by helicopter or approved tundra travel vehicles to minimize impacts to the tundra.

Additionally, Hilcorp may use unmanned aerial surveys (UASs) during pile driving, pipe driving, and slope shaping and armament activities during the open-water season in Year 2 of construction and subsequently during decommissioning to monitor for whales or seals that may occur in incidental Level B harassment zones as described in the 2019 LOA issued by the National Marine Fisheries Service (NMFS 2020). Recent developments in the technical capacity and civilian use of UASs (defined as vehicles flying without a human pilot on board) have led to some investigations into potential use of these systems for monitoring and conducting aerial surveys of marine mammals (Koski *et al.* 2009; Hodgson *et al.* 2013). UASs, operating under autopilot and mounted with Global Positioning System (GPS) and imaging systems, have been used and evaluated in the Arctic (Koski *et al.* 2009) and have potential to replace traditional manned aerial surveys and provide an improved method for monitoring marine mammal populations. Hilcorp plans to seek a waiver, if necessary, from the Federal Aviation Administration (FAA) to operate the UAS above 122 m (400 ft) and beyond the line of sight of the pilot. Ground control for the UAS would be located at Liberty Island, Endicott, or another shore-based facility close to Liberty (NMFS 2020).

After construction, aircraft, land vehicle, and marine traffic may be at similar levels as those described for Northstar Island, although specific details beyond those presented here are not presently known.

Ice roads would be used for onshore and offshore access, installing the pipeline, hauling gravel used to construct the island, moving equipment on/off island, and personnel and supply transit. Ice road construction can typically be initiated in mid- to late-December and can be maintained until mid-May, weather depending. Ice road #1 would extend approximately 11.3 km (7 mi) over shorefast sea ice from the Endicott SDI to the LDPI (the SDI to LDPI ice road). It would be approximately 37 m wide (120 ft) with

a driving lane of approximately 12 m (40 ft) and cover approximately 64.8 ha (160 ac) of sea ice. Ice road #2 (approximately 11.3 km [7 mi]) would connect the LDPI to the proposed Kadleroshilik River gravel mine site and then would continue to the juncture with the Badami ice road (which is ice road #4). It would be approximately 15 m (50 ft) wide. Ice road #3 (approximately 9.6 km [6 mi], termed the “Midpoint Access Road”) would intersect the SDI to LDPI ice road and the ice road between the LDPI and the mine site. It would be approximately 12 m (40 ft) wide. Ice road #4 (approximately 19.3 km [12 mi]), located completely onshore, would parallel the Badami pipeline and connect the mine site with the Endicott road.

All four ice roads would be constructed for the first 3 years to support pipeline installation and transportation from existing North Slope roads to the proposed gravel mine site, and from the mine site to the proposed LDPI location in the Beaufort Sea. After Year 3, only ice road #1 would be constructed to allow additional materials and equipment to be mobilized to support LDPI, pipeline, and facility construction activities as all island construction and pipeline installation should be complete by Year 3. In addition to the ice roads, three ice pads are proposed to support construction activities (Year 2 and Year 3). These would be used to support LDPI, pipeline (including pipe stringing and two stockpile/disposal areas), and facilities construction. A fourth staging area ice pad (approximately 107 by 213 m (350 by 700 ft) would be built on the sea ice on the west side of the LDPI during production well drilling operations.

Other on-ice activities occurring prior to March 1 may include spill training exercises, pipeline surveys, snow clearing, and work conducted by other snow vehicles such as a Pisten Bully, snow machine, or Rolligon. Prior to March 1, these activities would occur outside of the delineated ice road/trail and shoulder areas.

The LDPI would include a self-contained offshore drilling and production facility located on an artificial gravel island with a subsea pipeline to shore. The LDPI would be located approximately 8 km (5 mi) offshore in Foggy Island Bay and 11.7 km (7.3 mi) southeast of the existing SDI on the Endicott causeway. The LDPI would be constructed of reinforced gravel in 5.8 m (19 ft) of water and have a working surface of approximately 3.8 ha (9.3 ac). A steel sheet pile wall would

surround the island to stabilize the placed gravel, and the island would include a slope protection bench, dock and ice road access, and a seawater intake area.

Hilcorp would begin constructing the LDPI during the winter immediately following construction of the ice road from the mine site to the island location. Sections of sea ice at the island's location would be cut using a ditchwitch and removed. A backhoe and support trucks using the ice road would move ice away. Once the ice is removed, gravel would be poured through the water column to the sea floor, building the island structure from the bottom up. A conical pile of gravel (hauled in from trucks from the mine site using the ice road) would form on the sea floor until it reaches the surface of the ice. Gravel hauling over the ice road to the LDPI construction site is estimated to continue for 50 to 70 days and conclude mid-April or earlier depending on road conditions. The construction would continue with a sequence of removing additional ice and pouring gravel until the surface size is achieved.

Following gravel placement, slope armoring and protection installation would occur. Using island-based equipment (e.g., backhoe, bucket-dredge) and divers, Hilcorp would create a slope protection profile consisting of an 18.3-m (60-ft)-wide bench covered with a linked concrete mat that extends from a sheet pile wall surrounding the island to slightly above medium lower low water. The linked concrete mat requires a high-strength, yet highly permeable, woven polyester fabric under layer to contain the gravel island fill. The filter fabric panels would be overlapped and tied together side-by-side (requiring diving operations) to prevent the panels from separating and exposing the underlying gravel fill. Because the fabric is overlapped and tied together, no slope protection debris would enter the water column should it be damaged. Above the fabric under layer, a robust geo-grid would be placed as an abrasion guard to prevent damage to the fabric by the linked mat armor. The concrete mat system would continue at a 3:1 slope another 26.4 m (86.5 ft) into the water, terminating at a depth of 5.8 m (19 ft). In total, from the sheet pile wall, the bench and concrete mat would extend 44.7 m (146.5 ft). Island slope protection is required to assure the integrity of the gravel island by protecting it from the erosive forces of waves, ice ride-up, and currents. A detailed inspection of the island slope protection system would be conducted annually during the open-water season to document changes in the condition of

this system that have occurred since the previous year's inspection. Any damaged material would be removed. Above-water activities would consist of a visual inspection of the dock and sheet pile enclosure that would document the condition of the island bench and ramps. The below-water slopes would be inspected by divers or, if water clarity allows, remotely by underwater cameras contracted separately by Hilcorp. The results of the below-water inspection would be recorded for repair if needed. No vessels would be required. Multi-beam bathymetry and side-scan sonar imagery of the below-water slopes and adjacent sea bottom would be acquired using a bathymetry vessel. The sidescan sonar would operate at a frequency between 200 and 400 kHz. The single-beam echosounder would operate at a frequency of about 210 kHz.

Once the slope protection is in place, Hilcorp would install the sheet pile wall around the perimeter of the island using vibratory and, if necessary, impact hammers. Sheet pile driving is anticipated to be conducted between March and August, during approximately 4 months of the ice-covered season and, if necessary, approximately 15 days during the open-water season. Sheet pile driving methods and techniques are expected to be similar to the installation of sheet piles at Northstar during which all pile driving was completed during the ice-covered season. Therefore, Hilcorp anticipates most or all sheet pile would be installed during ice-covered conditions. Hilcorp anticipates driving up to 20 piles per day to a depth of 7.62 m (25 ft). A vibratory hammer would be used first, followed by an impact hammer to "proof" the pile. Hilcorp anticipates each pile needing 100 hammer strikes over approximately 2 minutes (100 strikes) of impact driving to obtain the final desired depth for each sheet pile. To finish installing up to 20 piles per day, the impact hammer would be used a maximum of 40 minutes per day with an anticipated duration of 20 minutes per day.

For vibratory driving, pile penetration speed can vary depending on ground conditions, but a minimum sheet pile penetration speed is 0.5 m (20 in) per minute to avoid damage to the pile or hammer (NASSPA 2005). For this project, the anticipated duration is based on a preferred penetration speed greater than 1 m (40 in) per minute, resulting in 7.5 minutes to drive each pile. Given the high storm surge and larger waves that are expected to arrive at the LDPI site from the west and northwest, the wall would be higher on

the west side than on the east side. At the top of the sheet-pile wall, overhanging steel "parapet" would be installed to prevent wave passage over the wall.

Within the interior of the island, 16 steel conductor pipes would be driven to a depth of 49 m (160 ft) to provide the initial stable structural foundation for each oil well. They would be set in a well row in the middle of the island. Depending on the substrate, the conductor pipes would be driven by impact or vibratory methods or both. During the construction of the nearby Northstar Island (located in deeper water), it took 5 to 8.5 hours to drive one conductor pipe (Blackwell *et al.* 2004). For the Liberty LDPI, based on the 20 percent impact hammer usage factor (USDOT 2006.), it is expected that 2 cumulative hours of impact pipe driving (4,400 to 3,600 strikes) would occur over a 10.5 non-consecutive hour day. Conductor pipe driving is anticipated to be conducted between March and August and take 16 days total, installing one pipe per day. In addition, approximately 700 to 1,000 foundation piles may also be installed within the interior of the island should engineering determine they are necessary for island support.

The LDPI layout includes areas for staging, drilling, production, utilities, a camp, a relief well, a helicopter landing pad, and two docks to accommodate barges, a hovercraft, and small crew boats. It would also have ramps for ice road and amphibious vehicle access. An STP would also be located at the facility to treat seawater and then commingle it with produced water to be injected into the Liberty Reservoir to maintain reservoir pressure. Treated seawater would be used to create potable water and utility water for the facility. A membrane bioreactor would treat sanitary wastewater, and remaining sewage solids would be incinerated on the island or stored in enclosed tanks prior to shipment to Deadhorse for treatment.

All modules, buildings, and material for onsite construction would be trucked to the North Slope via the Dalton Highway and staged at West Dock, Endicott SDI, or in Deadhorse. Another option is to use ocean-going barges from Dutch Harbor to transport materials or modules to the island during the open-water season.

Depending on the season, equipment and material would be transported via coastal barges in open water, or ice roads from SDI in the winter. The first modules would be delivered in the third quarter of Year 2 to support the installation of living, drilling, and

production facilities. Remaining process modules would be delivered to correspond with first oil and the ramp-up in drilling capacity.

Onsite facility installation would commence in August of Year 2 and be completed by the end of Year 4 (May) to accommodate the overall construction and production ramp-up schedule. Some facilities that are required early would be barged in the third quarter of Year 2 and would be installed and operational by the end of the fourth quarter of Year 2. Other modules would be delivered as soon as the ice road from SDI is in place. The drilling unit and associated equipment would be transferred by barge through Dutch Harbor or from West Dock to the LDPI during the open-water season in Year 2 using a seagoing barge and ocean class tug. The seagoing barge is ~30.5 m (100 ft) wide and ~122 m (400 ft) long, and the tug is ~30.5 m (100 ft) long. Although the exact vessels to be used are unknown, Crowley lists Ocean class tugs at <1,600 gross registered tonnage. The weight of the seagoing barge is not known at this time.

Hilcorp would install a pipe-in-pipe subsea pipeline consisting of a 30.5-cm (12-in)-diameter inner pipe and a 40.6-cm (16-in)-diameter outer pipe to transport oil from the LDPI to the existing Badami pipeline. Pipeline construction is planned for the winter after the island is constructed. A schematic of the pipeline can be found in Figure 2–3 of BOEM's Final EIS available at <https://www.boem.gov/Hilcorp-Liberty/>. The pipeline would extend from the LDPI, across Foggy Island Bay, and terminate onshore at the existing Badami Pipeline tie-in location. For the marine segment, construction would progress from shallower water to deeper water with multiple construction spreads.

To install the pipeline, a trench would be excavated using ice-road based long-reach excavators with pontoon tracks. The pipeline bundle would be lowered into the trench using side booms to control its vertical and horizontal position, and the trench would be backfilled by excavators using excavated trench spoils and select backfill. Hilcorp intends to place all material back in the trench slot. All work would be done from ice roads using conventional excavation and dirt-moving construction equipment. The target trench depth is 2.7 to 3.4 m (9 to 11 ft) with a proposed maximum depth of cover of approximately 2.1 m (7 ft). The pipeline would be approximately 9 km (5.6 mi) long.

At the pipeline landfall (where the pipeline transitions from onshore to

offshore), Hilcorp would construct an approximately 0.6-ha (1.4-ac) trench to protect against coastal erosion and ice ride-up associated with onshore sea ice movement and to accommodate the installation of thermosiphons (heat pipes that circulate fluid based on natural convection to maintain or cool ambient ground temperature) along the pipeline. The onshore pipeline would cross the tundra for almost 2.4 km (1.5 mi) until it intersects the existing Badami pipeline system. The single wall 30.5-cm (12-in) pipeline would rest on 150 to 170 VSMs, spaced approximately 15 m (50 ft) apart to provide the pipeline a minimum 2.1-m (7-ft) clearance above the tundra. Hydro-testing (pressure testing using sea water) of the entire pipeline would be required to complete pipeline commissioning.

The final drill rig has yet to be chosen but has been narrowed to 2 options and would accommodate drilling of 16 wells. The first option is the use of an existing platform-style drilling unit that Hilcorp owns and operates in the Cook Inlet. Designated as Rig 428, the rig has been used recently and is well suited in terms of depth and horsepower rating to drill the wells at Liberty. A second option that is being investigated is a new build drilling unit that would be built not only to drill Liberty development wells but would be more portable and more adaptable to other applications on the North Slope. Regardless of drill rig type, the well row arrangement on the island is designed to accommodate up to 16 wells. While Hilcorp is proposing a 16-well design, only 10 wells would be drilled. The six additional well slots would be available as backups or for potential in-fill drilling if needed during the project life.

Drilling would be done using a conventional rotary drilling rig, initially powered by diesel, and eventually converted to fuel gas produced from the third well. Gas from the third well would also replace diesel fuel for the grind-and-inject facility and production facilities. A location on the LDPI is designated for drilling a relief well, if needed.

Process facilities on the island would separate crude oil from produced water and gas. Gas and water would be injected into the reservoir to provide pressure support and increase recovery from the field. A single-phase subsea pipe-in-pipe pipeline would transport sales-quality crude from the LDPI to shore, where an aboveground pipeline would transport crude to the existing Badami pipeline. From there, crude would be transported to the Endicott Sales Oil Pipeline, which ties into Pump

Station 1 of the TAPS for eventual delivery to a refinery.

#### North Slope Gas Development

The AOGA request discusses two projects currently submitted for approval and permitting that would transport natural gas from the North Slope via pipeline. Only a small fraction of this project would fall within the 40-km (25-mi) inland jurisdiction area of this proposed ITR. The two projects are the Alaska Liquefied Natural Gas Project (Alaska LNG) and the Alaska Stand Alone Pipeline (ASAP). Both of these projects are be discussed below and their effects analyzed in this proposed ITR, but only one project could be constructed during the 2021–2026 period.

#### Alaska Liquefied Natural Gas Project (Alaska LNG)

The Alaska LNG project has been proposed by the Alaska Gasline Development Corporation (AGDC) to serve as a single integrated project with several facilities designed to liquefy natural gas. The fields of interest are the Point Thomson Unit (PTU) and PBU production fields. The Alaska LNG project would consist of a Gas Treatment Plant (GTP); a Point Thomson Transmission Line (PTTL) to connect the GTP to the PTU gas production facility; a Prudhoe Bay Transmission Line (PBTL) to connect the GTP to the PBU gas production facility; a liquefaction facility in southcentral Alaska; and a 1,297-km (807-mi)-long, 107-cm (42-in)-diameter pipeline (called the Mainline) that would connect the GTP to the liquefaction facility. Only the GTP, PTTL, PBTL, a portion of the Mainline, and related ancillary facilities would be located within the geographic scope of AOGA's Request. Related components would require the construction of ice roads, ice pads, gravel roads, gravel pads, camps, laydown areas, and infrastructure to support barge and module offloading.

Barges would be used to transport GTP modules at West Dock at Prudhoe Bay several times annually, with GTP modules being offloaded and transported by land to the proposed GTP facility in the PBU. However, deliveries would require deep draft tug and barges to a newly constructed berthing site at the northeast end of West Dock. Additionally, some barges would continue to deliver small modules and supplies to Point Thomson. Related activities include screeding, shallow draft tug use, sea ice cutting, gravel placement, sea ice road and sea ice pad development, vibratory

and impact pile driving, and the use of an offshore barge staging area.

A temporary bridge (developed from ballasted barges) would be developed to assist in module transportation. Barges would be ballasted when the area is ice-free and then removed and overwintered at West Dock before the sea freezes over. A staging area would then be used to prepare modules for transportation, maintenance, and gravel road development. Installation of ramps and fortification would utilize vibratory and impact pile driving. Seabed preparations and level surface preparations (*i.e.*, ice cutting, ice road development, gravel placement, screeding) would take place as needed. Breasting/mooring dolphins would be installed at the breach point via pile driving to anchor and stabilize the ballasted barges.

A gravel pad would be developed to assist construction of the GTP, adjacent camps, and other relevant facilities where work crews utilize heavy equipment and machinery to assemble, install, and connect the GTP modules. To assist, gravel mining would use digging and blasting, and gravel would be placed to create pads and develop or improve ice and gravel roads.

Several types of development and construction would be required at different stages of the project. The construction of the Mainline would require the use of ice pads, ice roads, gravel roads, chain trenchers, crane booms, backhoes, and other heavy equipment. The installation of the PTTL and PBTL would require ice roads, ice pads, gravel roads, crane booms, mobile drills or augers, lifts, and other heavy equipment. After installation, crews would work on land and streambank restoration, revegetation, hydrostatic testing, pipeline security, and monitoring efforts. The development of the ancillary facility would require the construction of ice roads, ice pads, as well as minimal transportation and gravel placement.

#### Alaska Stand Alone Pipeline (ASAP)

The ASAP is the alternative project option that AGDC could utilize, allowing North Slope natural gas to be supplied to Alaskan communities. ASAP would require several components, including a Gas Conditioning Facility (GCF) at Prudhoe Bay; a 1,180-km (733-mi)-long, 0.9-m (36-in)-diameter pipeline that would connect the GCF to a tie-in found in southcentral Alaska (called the Mainline); and a 48-km (30-m), 0.3-m (12-in)-diameter lateral pipeline connecting the Mainline pipeline to Fairbanks (referred to as the Fairbanks

Lateral). Similar to the Alaska LNG pipeline, only parts of this project would fall within the geographic scope of this proposed ITR. These relevant project components are the GCF, a portion of the ASAP Mainline, and related ancillary facilities. Construction would include the installation of supporting facilities and infrastructure, ice road and pad development, gravel road and pad development, camp establishment, laydown area establishment, and additional infrastructure to support barge and module offloading.

Barges would be used to transport the GCF modules to West Dock in Prudhoe Bay and would be offloaded and transported by ground to the proposed facility site within the PBU. Module and supply deliveries would utilize deep draft tugs and barges to access an existing berthing location on the northeast side of West Dock called DH3. Maintenance on DH3 would be required to accommodate the delivery of larger loads and would consist of infrastructure reinforcement and elevation increases on one of the berths. In the winter, a navigational channel and turn basin would be dredged to a depth of 2.7 m (9 ft). Dredged material would be disposed of on ground-fast ice found in 0.6012;1.2 m (2012;4 ft) deep water in Prudhoe Bay. An offshore staging area would be developed approximately 4.8 2012;8 km (32012;5 mi) from West Dock to allow deep draft tugs and barges to stage before further transportation to DH3 and subsequent offload by shallow draft tugs. Other activities include seabed screeding, gravel placement, development of a sea ice road and pads, and pile driving (vibratory and impact) to install infrastructure at West Dock.

A temporary bridge (composed of ballasted barges and associated infrastructure), paralleling an existing weight-limited bridge would be developed to assist in transporting large modules off West Dock. Barges would be ballasted when the area is ice-free and then removed and overwintered at West Dock before the sea freezes over. A staging area would be used to prepare modules for transportation, maintenance, and gravel road development. The bridge construction would require ramp installation, fortification through impact, and vibratory pile driving. Support activities (development of ice roads and pads, gravel roads and pads, ice cutting, seabed screeding) would also take place. Breasting/mooring dolphins would be installed at the breach point via pile driving to anchor and stabilize the ballasted barges.

A gravel facility pad would be formed to assist in the construction of the GCF. Access roads would then be developed to allow crews and heavy equipment to install and connect various GCF modules. Gravel would be obtained through digging, blasting, transportation, gravel pad placement, and improvements to other ice and gravel roads.

The construction of the Mainline pipeline would require the construction of ice pads, ice roads, and gravel roads along with the use of chain trenchers, crane booms, backhoes, and other heavy equipment. Block valves would be installed above ground along the length of the Mainline. After installation, crews would work on land and streambank restoration, revegetation, hydrostatic testing, pipeline security, and monitoring efforts.

#### Pikka Unit

The Pikka Development (formally known as the Nanshuk Project) is located approximately 83.7 km (52 mi) west of Deadhorse and 11.3 km (7 mi) northeast of Nuiqsut. Oil Search Alaska operates leases held jointly between the State of Alaska and ASRC located southeast of the East Channel of the Colville River. Pikka is located further southwest from the existing Oooguruk Development Project, west of the existing KRU, and east of Alpine and Alpine's Satellite Development Projects. Most of the infrastructure is located over 8 km (5 mi) from the coast within the Pikka Unit; however, Oil Search Alaska expects some smaller projects and activities to occur outside the unit to the south, east, and at Oliktok Point.

The Pikka Project would include a total of three drill-sites for approximately 150 (production, injectors, underground injection) wells, as well as the Nanshuk Processing Facility (NPF), the Nanushuk Operations Pad, a tie-in pad (TIP), various camps, warehouses, facilities on pads, infield pipelines, pipelines for import and export activities, various roads (ice, infield, access), a boat ramp, and a portable water system. Additionally, there are plans to expand the Oliktok Dock and to install an STP adjacent to the already existing infrastructure. A make-up water pipeline would also be installed from the STP to the TIP. Oil Search Alaska also plans to perform minor upgrades and maintenance, as necessary, to the existing road systems to facilitate transportation of sealift modules from Oliktok Point to the Pikka Unit.

Oil Search Alaska plans to develop a pad to station the NPF and all relevant equipment and operations (*i.e.*, phase

separation; heating and cooling; pumping; gas treatment and compression for gas injections; water treatment for injection). All oil procured, processed, and designated for sale would travel from the NPF to the TIP near Kuparuk's CPF 2 via the Pikka Project pipeline that would tie in to the Kuparuk Sales Pipeline and would then be transported to TAPS. Construction of the pad would allow for additional space that could be repurposed for drilling or for operational use during the development of the Pikka Project. This pad would contain other facilities required for project operation and development, including: Metering and pigging facilities; power generation facilities; a truck fill station; construction material staging areas; equipment staging areas; a tank farm (contains diesel, refined fuel, crude oil, injection water, production chemicals, glycol, and methanol storage tanks); and a central control room. All major components required for the development of the NPF would be constructed off-site and brought in via truck or barge during the summer season. Barges would deliver and offload necessary modules at Oliktok Dock, which would travel to the NPF site during summer months. Seabed screeding would occur at Oliktok Point to maintain water depth for necessary barges.

Pikka would use gravel roads to the Unit, which would allow year-round access from the Dalton Highway. All gravel needed for project activities (approximately 112 ha [276 ac]) would be sourced from several existing gravel mine sites. A majority of gravel acquisition and laying would occur during the winter season and then be compacted in the summer. All equipment and supplies necessary would be brought in on existing roads from Anchorage or Fairbanks to Deadhorse. Supplies and equipment would then be forwarded to the Pikka Unit; no aerial transportation for supplies is expected. Regular traffic is expected once construction of the roads is completed; Oil Search Alaska expects arterial routes between the processing facilities and camps to experience the heaviest use of traffic. Drill-site access roads are expected to experience the least amount of traffic; however, drill-site traffic is expected to increase temporarily during periods of active drilling, maintenance, or other relevant aspects of the project. Standard vehicles would include light passenger trucks, heavy tractor-trailer trucks, heavy equipment, and oil rigs.

Several types of aircraft operations are expected at the Pikka Unit throughout

the 2021–2026 period. Personnel would be transported to Pikka via commercial flights from Deadhorse Airport and by ground-based vehicle transport. Currently, there is no plan to develop an airstrip at Pikka. Personnel flights are expected to be infrequent to and from the Pikka Unit; however, Oil Search Alaska expects that some transport directly to the Unit may be required. Several environmental studies performed via aircraft are expected during the ITR period. Some of these include AIR surveys, cultural resources, stick-picking, and hydrology studies. AIR surveys in support of the Pikka Unit would occur annually to locate polar bear dens.

Summer travel would utilize vehicles such as Rolligons and Tuckers to assess pipelines not found adjacent to the gravel roads. During 24-hour sunlight periods, these vehicles would operate across all hours. Stick-picking and thermistor retrieval would also occur in the summer. In the winter, ice roads would be constructed across the Unit. These ice roads would be developed to haul gravel from existing mine sites to haul gravel for road and pad construction. Ice roads would also be constructed to support the installation of VSM and pipelines. Off-road winter vehicles would be used when the tundra is frozen and covered with snow to provide maintenance and access for inspection. Temporary ice roads and ice pads would be built to allow for the movement and staging of heavy equipment, maintenance, and construction. Oil Search Alaska would perform regular winter travel to support operations across the Pikka Unit.

Oil Search Alaska plans to install a bridge over the Kachemach River (more than 8 km [5 mi] from the coast) and install the STP at Oliktok Point. Both projects would require in-water pile driving, which is expected to take place during the winter seasons. In-water pile driving (in the winter), placement of gravel fill (open-water period), and installation of the STP barge outfall structure (open-water period) would take place at Oliktok Point. Dredging and screeding activities would prepare the site for STP and module delivery via barge. Annual maintenance screeding and dredging (expected twice during the request period) may be needed to maintain the site. Dredging spoils would be transported away, and all work would occur during the open-water season between May and October. Screeding activities are expected to take place annually over the course of a 2-week period, depending on stability and safety needs.

## Gas Hydrate Exploration and Research

The U.S. Geological Survey estimates that the North Slope contains over 54 trillion cubic feet of recoverable gas assets (Collette *et al.* 2019). Over the last 5 years, Industry has demonstrated a growing interest in the potential to explore and extract these reserves. Federal funds from the Department of Energy have been provided in the past to support programs on domestic gas hydrate exploration, research, and development. Furthermore, the State of Alaska provides support for gas hydrate research and development through the development of the Eileen hydrate trend deferred area near Milne Point, with specific leases being offered for gas hydrate research and exploration.

As of 2021, a few gas hydrate exploration and test wells have been drilled within the Beaufort Sea region. Due to the support the gas hydrate industry has received, AOGA expects continued interest to grow over the years. As such, AOGA expects that a relatively low but increasing amount of gas hydrate exploration and research is expected throughout the 2021–2026 period.

## Environmental Studies

Per AOGA's Request, Industry would continue to engage in various environmental studies throughout the life of the proposed ITR. Such activities include: Geological and geotechnical surveys (*i.e.*, seismic surveys); surveys on geomorphology (soils, ice content, permafrost), archeology and cultural resources; vegetation mapping; analysis of fish, avian, and mammal species and their habitats; acoustic monitoring; hydrology studies; and various other freshwater, marine, and terrestrial studies of the coastal and offshore regions within the Arctic. These studies typically include various stakeholders, including consultants and consulting companies; other industries; government; academia (university-level); nonprofits and nongovernmental organizations; and local community parties. However, AOGA's 2021–2026 ITR request requests coverage only for environmental studies directly related to Industry activities (*e.g.*, monitoring studies in response to regulatory requirements). No third-party studies will be covered except by those mentioned in this proposed ITR and the AOGA request.

During the 2021–2026 lifespan of the proposed ITR, Industry would continue studies that are conducted for general monitoring purposes for regulatory and/or permit requirements and for expected or planned exploration and

development activities within the Beaufort Sea region. Environmental studies are anticipated to occur during the summer season as to avoid overlap with any denning polar bears. Activities may utilize vessels, fixed-wing aircrafts, or helicopters to access research sites.

#### Mitigation Measures

AOGA has included in their Request a number of measures to mitigate the effects of the proposed activities on Pacific walruses and polar bears. Many of these measures have been historically used by oil and gas entities throughout the North Slope of Alaska, and have been developed as a part of past coordination with the Service. Measures include: Development and adherence to polar bear and Pacific walrus interaction plans; design of facilities to reduce the possibility of polar bears reaching attractants; avoidance of operating equipment near potential den locations; flying aircraft at a minimum altitude and distance from polar bears and hauled out Pacific walruses; employing trained protected species observers; and reporting all polar bear or Pacific walrus encounters to the Service. Additional descriptions of these measures can be found in the AOGA Request for an ITR at: [www.regulations.gov](http://www.regulations.gov) in Docket No. FWS-R7-ES-2021-0037.

#### Maternal Polar Bear Den Survey Flights

Per AOGA's Request, Industry will also conduct aerial infrared (AIR) surveys to locate maternal polar bear dens in order to mitigate potential impacts to mothers and cubs during the lifetime of this ITR. AIR surveys are used to detect body heat emitted by polar bears, which, in turn, is used to determine potential denning polar bears. AIR surveys are performed in winter months (December or January) before winter activities commence. AIR imagery is analyzed in real-time during the flight and then reviewed post-flight with the Service to identify any suspected maternal den locations, ensure appropriate coverage, and check the quality of the images and recordings. Some sites may need to be resurveyed if a suspected hotspot (heat signature detectable in a snowdrift) is observed. These followup surveys of hotspots are conducted in varying weather conditions or using an electro-optical camera during daylight hours. On-the-ground reconnaissance or the use of scent-training dogs may also be used to recheck the suspected den.

Surveys utilize aerial infrared cameras on fixed-wing aircrafts with flights typically flown between 245–457 meters (800 to 1,500 feet) above ground level at a speed of <185 km/h (<115 mph).

Surveys typically occur twice a day (weather permitting) during periods of darkness (civil twilight) across the North Slope for less than 4.5 hours per survey. Surveys are highly dependent on the weather as it can affect the image quality of the AIR video and the safety of the participants. These surveys do not follow a typical transect configuration; instead they are concentrated on areas that would be suitable for polar bear denning activity such as drainages, banks, bluffs, or other areas of topographic relief around sites where Industry has winter activities, tundra travel, or ice road construction planned or anticipated. As part of the AOGA's Request and as described the mitigation measures included in this proposed ITR, all denning habitat within one mile of the ice-season industrial footprint will be surveyed twice each year. In years where seismic surveys are proposed, all denning habitat within the boundaries of the seismic surveys will be surveyed three times, and a third survey will be conducted on denning habitat along the pipeline between Badami and the road to Endicott Island. Greater detail on the timing of these surveys can be found in *Methods for Modeling the Effects of Den Disturbance*.

A suspected heat signature observed in a potential den found via AIR is classified into three categories: A hotspot, a revisit, or a putative den. The following designations are discussed below.

A "hotspot" is a warm spot found on the AIR camera indicative of a polar bear den through the examination of the size and shape near the middle of the snow drift. Signs of wildlife presence (e.g., digging, tracks) may be present and visible. Suspected dens that are open (i.e., not drifted closed by the snow) are considered hotspots because polar bears may dig multiple test evacuation sites when searching for an appropriate place to den and unused dens will cool down and be excluded from consideration. Hotspots are reexamined and either eliminated or upgraded to a "putative den" designation. Industry representatives, in coordination and compliance with the Service, may utilize other methods outside of AIR to gather additional information on a suspected hotspot.

A "revisit" is a designation for a warm spot in a snowdrift but lacking signs of a polar bear den (e.g., tailings pile, signs of animal activity, appropriate shape or size). These categorizations are often revisited during a subsequent survey, upgraded to a "hotspot" designation, or eliminated from further consideration pending the evidence presented.

A "putative den" is a hotspot with a distinct heat signature, found within the appropriate habitat, and that may continue to be present for several days as noted by revisits. The area may show evidence of an animal's presence that may not definitively be attributed to a non-polar bear species or cause (e.g., a fox or other animal digging). The final determination is often unknown as these sites are not investigated further, monitored, or revisited in the spring.

When and if a putative den is found near planned or existing infrastructure or activities, the Industry representatives will immediately cease operations within one mile of the location and coordinate with the Service to mitigate any potential disturbances while further information is obtained.

#### Evaluation of the Nature and Level of Activities

The annual level of activity at existing production facilities in the Request will be similar to that which occurred under the previous regulations. The increase in the area of the industrial footprint with the addition of new facilities, such as drill pads, pipelines, and support facilities, is at a rate consistent with prior 5-year regulatory periods. Additional onshore and offshore facilities are projected within the timeframe of these regulations and will add to the total permanent activities in the area. This rate of expansion is similar to prior production schedules.

#### Description of Marine Mammals in the Specified Geographic Region

##### Polar Bear

Polar bears are distributed throughout the ice-covered seas and adjacent coasts of the Arctic region. The current total polar bear population is estimated at approximately 26,000 individuals (95 percent Confidence Interval (CI) = 22,000–31,000, Wiig *et al.* 2015; Regehr *et al.* 2016) and comprises 19 stocks ranging across 5 countries and 4 ecoregions that reflect the polar bear dependency on sea-ice dynamics and seasonality (Amstrup *et al.* 2008). Two stocks occur in the United States (Alaska) with ranges that extend to adjacent countries: Canada (the Southern Beaufort Sea stock) and the Russia Federation (the Chukchi/Bering Seas stock). The discussion below is focused on the Southern Beaufort Sea stock of polar bears, as the proposed activities in this ITR would overlap only their distribution.

Polar bears typically occur at low, uneven densities throughout their circumpolar range (DeMaster and Stirling 1981, Amstrup *et al.* 2011,

Hamilton and Derocher 2019) in areas where the sea is ice-covered for all or part of the year. They are typically most abundant on sea-ice, near polynyas (*i.e.*, areas of persistent open water) and fractures in the ice, and over relatively shallow continental shelf waters with high marine productivity (Durner *et al.* 2004). This sea-ice habitat favors foraging for their primary prey, ringed seals (*Pusa hispida*), and other species such as bearded seals (*Erignathus barbatus*) (Thiermann *et al.* 2008, Cherry *et al.* 2011, Stirling and Derocher 2012). Although over most of their range polar bears prefer to remain on the sea-ice year-round, an increasing proportion of stocks are spending prolonged periods of time onshore (Rode *et al.* 2015, Atwood *et al.* 2016b). While time spent on land occurs primarily in late summer and autumn (Rode *et al.* 2015, Atwood *et al.* 2016b), they may be found throughout the year in the onshore and nearshore environments. Polar bear distribution in coastal habitats is often influenced by the movement of seasonal sea ice (Atwood *et al.* 2016b, Wilson *et al.* 2017) and its direct and indirect effects on foraging success and, in the case of pregnant females, also dependent on availability of suitable denning habitat (Durner *et al.* 2006, Rode *et al.* 2015, Atwood *et al.* 2016b).

In Alaska during the late summer/fall period (July through November), polar bears from the Southern Beaufort Sea stock often occur along the coast and barrier islands, which serve as travel corridors, resting areas, and to some degree, foraging areas. Based on Industry observations and coastal survey data acquired by the Service (Wilson *et al.* 2017), encounter rates between humans and polar bears are higher during the fall (July to November) than in any other season, and an average of 140 polar bears may occur on shore during any week during the period July through November between Utqiagvik and the Alaska-Canada border (Wilson *et al.* 2017). The length of time bears spend in these coastal habitats has been linked to sea ice dynamics (Rode *et al.* 2015, Atwood *et al.* 2016b). The remains of subsistence-harvested bowhead whales at Cross and Barter islands provide a readily available food attractant in these areas (Schliebe *et al.* 2006). However, the contribution of bowhead carcasses to the diet of Southern Beaufort Sea (SBS) polar bears varies annually (*e.g.*, estimated as 11–26 percent and 0–14 percent in 2003 and 2004, respectively) and by sex, likely depending on carcass and seal availability as well as ice conditions (Bentzen *et al.* 2007).

Polar bears have no natural predators (though cannibalism is known to occur; Stirling *et al.* 1993, Amstrup *et al.* 2006b). However, their life-history (*e.g.*, late maturity, small litter size, prolonged breeding interval) is conducive to low intrinsic population growth (*i.e.*, growth in the absence of human-caused mortality), which was estimated at 6 percent to 7.5 percent for the SBS stock during 2004–2006 (Regehr *et al.* 2010; Hunter *et al.* 2010). The lifespan of wild polar bears is approximately 25 years (Rode *et al.* 2020). Females reach sexual maturity at 3–6 years old giving birth 1 year later (Ramsay and Stirling 1988). In the SBS region, females typically give birth at 5 years old (Lentfer & Hensel 1980). On average, females in the SBS produce litter sizes of 1.9 cubs (SD=0.5; Smith *et al.* 2007, 2010, 2013; Robinson 2014) at intervals that vary from 1 to 3 or more years depending on cub survival (Ramsay and Stirling 1988) and foraging conditions. For example, when foraging conditions are unfavorable, polar bears may delay reproduction in favor of survival (Derocher and Stirling 1992; Eberhardt 2002). The determining factor for growth of polar bear stocks is adult female survival (Eberhardt 1990). In general, rates above 90 percent are essential to sustain polar bear stocks (Amstrup and Durner 1995) given low cub litter survival, which was estimated at 50 percent (90 percent CI: 33–67 percent) for the SBS stock during 2001–2006 (Regehr *et al.* 2010). In the SBS, the probability that adult females will survive and produce cubs-of-the-year is negatively correlated with ice-free periods over the continental shelf (Regehr *et al.* 2007a). In general, survival of cubs-of-the-year is positively related to the weight of the mother and their own weight (Derocher and Stirling 1996; Stirling *et al.* 1999).

Females without dependent cubs typically breed in the spring (Amstrup 2003, Stirling *et al.* 2016). Pregnant females enter maternity dens between October and December (Durner *et al.* 2001; Amstrup 2003), and young are usually born between early December and early January (Van de Velde *et al.* 2003). Only pregnant females den for an extended period during the winter (Rode *et al.* 2018). Other polar bears may excavate temporary dens to escape harsh winter conditions; however, shelter denning is rare for Alaskan polar bear stocks (Olson *et al.* 2017).

Typically, SBS females denning on land, emerge from the den with their cubs around mid-March (median emergence: March 11, Rode *et al.* 2018, USGS 2018), and commonly begin weaning when cubs are approximately

2.3–2.5 years old (Ramsay and Stirling 1986, Arnould and Ramsay 1994, Amstrup 2003, Rode 2020). Cubs are born blind, with limited fat reserves, and are able to walk only after 60–70 days (Blix and Lentfer 1979; Kenny and Bickel 2005). If a female leaves a den during early denning, cub mortality is likely to occur due to a variety of factors including susceptibility to cold temperatures (Blix and Lentfer 1979, Hansson and Thomassen 1983, Van de Velde 2003), predation (Derocher and Wiig 1999, Amstrup *et al.* 2006b), and mobility limitations (Lentfer 1975). Therefore, it is thought that successful denning, birthing, and rearing activities require a relatively undisturbed environment. A more detailed description of the potential consequences of disturbance to denning females can be found below in Potential Effects of Oil and Gas Industry Activities on Pacific Walrus, Polar Bear, and Prey Species: *Polar Bear: Effects to Denning Bears*. Radio and satellite telemetry studies indicate that denning can occur in multiyear pack ice and on land (Durner *et al.* 2020). The proportion of dens on land has been increasing along the Alaska region (34.4 percent in 1985–1995 to 55.2 percent in 2007–2013; Olson *et al.* 2017) likely in response to reductions in stable old ice, which is defined as sea ice that has survived at least one summer's melt (Bowditch 2002), increases in unconsolidated ice, and lengthening of the melt season (Fischbach *et al.* 2007, Olson *et al.* 2017). If sea-ice extent in the Arctic continues to decrease and the amount of unstable ice increases, a greater proportion of polar bears may seek to den on land (Durner *et al.* 2006, Fischbach *et al.* 2007, Olson *et al.* 2017).

In Alaska, maternal polar bear dens occur on barrier islands (linear features of low-elevation land adjacent to the main coastline that are separated from the mainland by bodies of water), river bank drainages, and deltas (*e.g.*, those associated with the Colville and Canning Rivers), much of the North Slope coastal plain (in particular within the 1002 Area, *i.e.*, the land designated in section 1002 of the Alaska National Interest Lands Conservation Act—part of the Arctic National Wildlife Refuge in northeastern Alaska; Amstrup 1993, Durner *et al.* 2006), and coastal bluffs that occur at the interface of mainland and marine habitat (Durner *et al.* 2006, 2013, 2020; Blank 2013; Wilson and Durner 2020). These types of terrestrial habitat are also designated as critical habitat for the polar bear under the Endangered Species Act (75 FR 76086, December 7, 2010). Management and

conservation concerns for the SBS and Chukchi/Bering Seas (CS) polar bear stocks include sea-ice loss due to climate change, human-bear conflict, oil and gas industry activity, oil spills and contaminants, marine shipping, disease, and the potential for overharvest (Regehr *et al.* 2017; U.S. Fish and Wildlife Service 2016). Notably, reductions in physical condition, growth, and survival of polar bears have been associated with declines in sea-ice (Rode *et al.* 2014, Bromaghin *et al.* 2015, Regehr *et al.* 2007, Lunn *et al.* 2016). The attrition of summer Arctic sea-ice is expected to remain a primary threat to polar bear populations (Amstrup *et al.* 2008, Stirling and Derocher 2012), since projections indicate continued climate warming at least through the end of this century (Atwood *et al.* 2016a, IPCC 2014) (see section on Climate Change for further details).

In 2008, the Service listed polar bears as threatened under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; ESA) due to the loss of sea-ice habitat caused by climate change (73 FR 28212, May 15, 2008). The Service later published a final rule under section 4(d) of the ESA for the polar bear, which was vacated and then reinstated when procedural requirements were satisfied (78 FR 11766, February 20, 2013). This section 4(d) rule provides for measures that are necessary and advisable for the conservation of polar bears. Specifically, the 4(d) rule: (a) Adopts the conservation regulatory requirements of the MMPA and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) for the polar bear as the appropriate regulatory provisions, in most instances; (b) provides that incidental, nonlethal take of polar bears resulting from activities outside the bear's current range is not prohibited under the ESA; (c) clarifies that the special rule does not alter the section 7 consultation requirements of the ESA; and (d) applies the standard ESA protections for threatened species when an activity is not covered by an MMPA or CITES authorization or exemption.

The Service designated critical habitat for polar bear populations in the United States effective January 6, 2011 (75 FR 76086, December 7, 2010). The designation of critical habitat identifies geographic areas that contain features that are essential for the conservation of a threatened or endangered species and that may require special management or protection. Under section 7 of the ESA, if there is a Federal action, the Service will analyze the potential impacts of the action upon polar bears and any

designated critical habitat. Polar bear critical habitat units include barrier island habitat, sea-ice habitat (both described in geographic terms), and terrestrial denning habitat (a functional determination). Barrier island habitat includes coastal barrier islands and spits along Alaska's coast; it is used for denning, refuge from human disturbance, access to maternal dens and feeding habitat, and travel along the coast. Sea-ice habitat is located over the continental shelf and includes water 300 m (~984 ft) or less in depth. Terrestrial denning habitat includes lands within 32 km (~20 mi) of the northern coast of Alaska between the Canadian border and the Kavik River and within 8 km (~5 mi) between the Kavik River and Utqiagvik. The total area designated under the ESA as critical habitat covers approximately 484,734 km<sup>2</sup> (~187,157 mi<sup>2</sup>) and is entirely within the lands and waters of the United States. Polar bear critical habitat is described in detail in the final rule that designated polar bear critical habitat (75 FR 76086, December 7, 2010). A digital copy of the final critical habitat rule is available at: [http://www.fws.gov/r7/fisheries/mmm/polarbear/pdf/federal\\_register\\_notice.pdf](http://www.fws.gov/r7/fisheries/mmm/polarbear/pdf/federal_register_notice.pdf).

#### Stock Size and Range

In Alaska, polar bears have historically been observed as far south in the Bering Sea as St. Matthew Island and the Pribilof Islands (Ray 1971). A detailed description of the SBS polar bear stock can be found in the draft revised Polar Bear (*Ursus maritimus*) Stock Assessment Reports published in the **Federal Register** on June 22, 2017 (82 FR 28526). Digital copies of these draft revised Stock Assessment Reports are available at: <https://www.fws.gov/r7/fisheries/mmm/polarbear/pdf/Southern%20Beaufort%20Sea%20Draft%20SAR%20%20for%20public%20comment.pdf> And [https://www.fws.gov/r7/fisheries/mmm/polarbear/pdf/Chukchi\\_Bering%20Sea%20Draft%20SAR%20for%20public%20comment.pdf](https://www.fws.gov/r7/fisheries/mmm/polarbear/pdf/Chukchi_Bering%20Sea%20Draft%20SAR%20for%20public%20comment.pdf).

#### Southern Beaufort Sea Stock

The SBS polar bear stock is shared between Canada and Alaska. Radio-telemetry data, combined with ear tag returns from harvested bears, suggest that the SBS stock occupies a region with a western boundary near Icy Cape, Alaska (Scharf *et al.* 2019), and an eastern boundary near Tuktoyaktuk, Northwest Territories, Canada (Durner *et al.* 2018).

The most recent population estimates for the Alaska SBS stock were produced by the U.S. Geological Survey (USGS) in 2020 (Atwood *et al.* 2020) and are based on mark-recapture and collared bear data collected from the SBS stock from 2001 to 2016. The SBS stock declined from 2003 to 2006 (this was also reported by Bromaghin *et al.* 2015) but stabilized from 2006 through 2015. The stock may have increased in size from 2009 to 2012; however, low survival in 2013 appears to have offset those gains. Atwood *et al.* (2020) provide estimates for the portion of the SBS stock only within the State of Alaska; however, their updated abundance estimate from 2015 is consistent with the estimate from Bromaghin *et al.* (2015) for 2010. Thus, the number of bears in the SBS stock is thought to have remained constant since the Bromaghin *et al.* (2015) estimate of 907 bears. This number is also supported by survival rate estimates provided by Atwood *et al.* (2020) that were relatively high in 2001–2003, decreased during 2004–2008, then improved in 2009, and remained high until 2015, except for much lower rates in 2012.

#### Pacific Walrus

Pacific walruses constitute a single panmictic population (Beatty *et al.* 2020) primarily inhabiting the shallow continental shelf waters of the Bering and Chukchi Seas where their distribution is largely influenced by the extent of the seasonal pack ice and prey densities (Lingqvist *et al.* 2009; Berta and Churchill 2012; USFWS 2017). From April to June, most of the population migrates from the Bering Sea through the Bering Strait and into the Chukchi Sea along lead systems that develop in the sea-ice and that, are closely associated with the edge of the seasonal pack ice during the open-water season (Truhkin and Simokon 2018). By July, tens of thousands of animals can be found along the edge of the pack ice from Russian waters to areas west of Point Barrow, Alaska (Fay 1982; Gilbert *et al.* 1992; Belikov *et al.* 1996; USFWS 2017). The pack ice has historically advanced rapidly southward in late fall, and most walruses return to the Bering Sea by mid- to late-November. During the winter breeding season, walruses are found in three concentration areas in the Bering Sea where open leads, polynyas, or thin ice occur (Fay 1982; Fay *et al.* 1984; Garlich-Miller *et al.* 2011a; Duffy-Anderson *et al.* 2019). While the specific location of these groups varies annually and seasonally depending upon the extent of the sea-ice, generally one group occurs near the Gulf of Anadyr, another south of St.

Lawrence Island, and a third in the southeastern Bering Sea south of Nunivak Island into northwestern Bristol Bay (Fay 1982; Mymrin *et al.* 1990; Garlich-Miller *et al.* 2011 USFWS 2017).

Although most walruses remain either in the Chukchi (for adult females and dependent young) or Bering (for adult males) Seas throughout the summer months, a few occasionally range into the Beaufort Sea in late summer (Mymrin *et al.* 1990; Garlich-Miller and Jay 2000; USFWS 2017). Industry monitoring reports have observed no more than 38 walruses in the Beaufort Sea ITR region geographic between 1995 and 2015, with only a few instances of disturbance to those walruses (AES Alaska 2015, Kalxdorff and Bridges 2003, USFWS unpubl. data). The USGS and the Alaska Department of Fish and Game (ADFG) have fitted between 30–60 walruses with satellite transmitters each year during spring and summer since 2008 and 2013 respectively. In 2014, a female tagged by ADFG spent about 3 weeks in Harrison Bay, Beaufort Sea (ADFG 2014). The USGS tracking data indicates that at least one tagged walrus ventured into the Beaufort Sea for brief periods in all years except 2011. Most of these movements extend northeast of Utqiagvik to the continental shelf edge north of Smith Bay (USGS 2015). All available information indicates that few walruses currently enter the Beaufort Sea and those that do, spend little time there. The Service and USGS are conducting multiyear studies on the walrus population to investigate movements and habitat use patterns, as it is possible that as sea-ice diminishes in the Chukchi Sea beyond the 5-year period of this proposed rule, walrus distribution and habitat use may change.

Walruses are generally found in waters of 100 m (328 ft) or less where they utilize sea-ice for passive transportation and rest over feeding areas, avoid predators, and birth and nurse their young (Fay 1982; Ray *et al.* 2006; Rosen 2020). The diet of walruses consists primarily of benthic invertebrates, most notably mollusks (Class Bivalvia) and marine worms (Class Polychaeta) (Fay 1982; Fay 1985; Bowen and Siniiff 1999; Born *et al.* 2003; Dehn *et al.* 2007; Sheffield and Grebmeier 2009; Maniscalco *et al.* 2020). When foraging, walruses are capable of diving to great depths with most dives lasting between 5 and 10 minutes with a 1–2-minute surface interval (Fay 1982; Bowen and Siniiff 1999; Born *et al.* 2003; Dehn *et al.* 2007; Sheffield and Grebmeier 2009). The foraging activity of walruses is thought

to have a significant influence on the ecology of the Bering and Chukchi Seas by disturbing the sea floor, thereby releasing nutrients into the water column that provide food for scavenger organisms and contributing to the diversity of the benthic community (Oliver *et al.* 1983; Klaus *et al.* 1990; Ray *et al.* 2006). In addition to feeding on benthic invertebrates, native hunters have also reported incidences of walruses preying on seals, fish, and other vertebrates (Fay 1982; Sheffield and Grebmeier 2009; Seymour *et al.* 2014).

Walruses are social and gregarious animals that often travel and haul-out onto ice or land in groups where they spend approximately 20–30 percent of their time out of the water (Gilbert 1999; Kastelien 2002; Jefferson *et al.* 2008; Monson *et al.* 2013; USFWS 2017). Hauled-out walruses tend to be in close physical contact, with groups ranging from a few animals up to 10s of thousands of individuals—the largest aggregations occurring at land haul-outs (Gilbert 1999; Monson *et al.* 2013; MacCracken 2017). In recent years, the barrier islands north of Point Lay, Alaska, have held large aggregations of walruses (20,000–40,000) in late summer and fall (Monson *et al.* 2013; USFWS 2017).

The size of the walrus population has never been known with certainty. Based on large sustained harvests in the 18th and 19th centuries, Fay (1957) speculated that the pre-exploitation population was represented by a minimum of 200,000 animals. Since that time, population size following European contact fluctuated markedly in response to varying levels of human exploitation. Large-scale commercial harvests are thought to have reduced the population to 50,000–100,000 animals in the mid-1950s (Fay *et al.* 1989). Following the implementation of harvest regulations in the 1960s and 1970s, which limited the take of females, the population increased rapidly and likely reached or exceeded the food-based carrying capacity of the region by 1980 (Fay *et al.* 1989, Fay *et al.* 1997, Garlich-Miller *et al.* 2006, MacCracken *et al.* 2014).

Between 1975 and 1990, aerial surveys conducted jointly by the United States and Russia at 5-year intervals produced population estimates ranging from about 200,000 to 255,000 individuals with large confidence intervals (Fay 1957; Fay 1982; Speckman *et al.* 2011). Efforts to survey the walrus population were suspended by both countries after 1990 following problems with survey methods that severely limited their utility. In 2006,

the United States and Russia conducted another joint aerial survey in the pack ice of the Bering Sea using thermal imaging systems to more accurately count walruses hauled out on sea-ice and applied satellite transmitters to account for walruses in the water (Speckman *et al.* 2011). In 2013, the Service began a genetic mark-recapture study to estimate population size. An initial analysis of data from 2013–2015 led to the most recent estimate of 283,213 Pacific walruses with a 95% credible interval of 93,000 to 478,975 individuals (Beatty 2017). Although this is the most recent estimate of Pacific walrus population size, it should be used with caution as it is preliminary.

Taylor and Udevitz (2015) used data from five aerial surveys and with ship-based age and sex composition counts that occurred in 1981–1984, 1998, and 1999 (Citta *et al.* 2014) in a Bayesian integrated population model to estimate population trends and vital rates in the period 1975–2006. They recalculated the 1975–1990 aerial survey estimates based on a lognormal distribution for inclusion in their model. Their results generally agreed with the large-scale population trends identified by Citta *et al.* (2014) but with slightly different population estimates in some years along with more precise confidence intervals. Ultimately, Taylor and Udevitz (2015) concluded (i) that though their model provides improved clarity on past walrus population trends and vital rates, it cannot overcome the large uncertainties in the available population size data, and (ii) that the absolute size of the Pacific walrus population will continue to be speculative until accurate empirical estimation of the population size becomes feasible.

A detailed description of the Pacific walrus stock can be found in the Pacific Walrus (*Odobenus rosmarus divergens*) Species Status Assessment (USFWS 2017). A digital copy of the Species Status Assessment is available at: <https://ecos.fws.gov/ServCat/DownloadFile/132114?Reference=86869>.

Polar bears are known to prey on walruses, particularly calves, and killer whales (*Orcinus orca*) have been known to take all age classes of walruses (Frost *et al.* 1992, Melnikov and Zagrebin 2005; Rode *et al.* 2014; Truhkin and Simokon 2018). Predation rates are unknown but are thought to be highest near terrestrial haul-out sites where large aggregations of walruses can be found, however, few observations exist of predation upon walruses further offshore.

Walruses have been hunted by coastal Alaska Natives and native people of the Chukotka, Russian Federation, for thousands of years (Fay *et al.* 1989).

Exploitation of the walrus population by Europeans has also occurred in varying degrees since the arrival of exploratory expeditions (Fay *et al.* 1989).

Commercial harvest of walruses ceased in the United States in 1941, and sport hunting ceased in 1972 with the passage of the MMPA and ceased in 1990 in Russia. Presently, walrus hunting in Alaska is restricted to subsistence use by Alaska Natives. Harvest mortality during 2000–2018 for both the United States and Russian Federation averaged 3,207 (SE = 194) walruses per year. This mortality estimate includes corrections for under-reported harvest and struck and lost animals. Harvests have been declining by about 3 percent per year since 2000 and were exceptionally low in the United States in 2012–2014.

Resource managers in Russia have concluded that the population has declined and have reduced harvest quotas in recent years accordingly (Kochnev 2004; Kochnev 2005; Kochnev 2010; pers. comm.; Litovka 2015, pers. comm.) based in part on the lower abundance estimate generated from the 2006 survey. Total harvest quotas in Russia were further decreased in 2020 to 1,088 walruses (Ministry of Agriculture of the Russian Federation Order of March 23, 2020).

Intra-specific trauma at coastal haulouts is also a known source of injury and mortality (Garlich-Miller *et al.* 2011). The risk of stampede-related injuries increases with the number of animals hauled out and with the duration spent on coastal haulouts, with calves and young being the most vulnerable to suffer injuries and/or mortality (USFWS 2017). However, management and protection programs in both the United States and the Russian Federation have been somewhat successful in reducing disturbances and large mortality events at coastal haulouts (USFWS 2015).

#### Climate Change

Global climate change will impact the future of both Pacific walrus and polar bear populations. As atmospheric greenhouse gas concentrations increase so will global temperatures (Pierrehumbert 2011; IPCC 2014) with substantial implications for the Arctic environment and its inhabitants (Bellard *et al.* 2012, Scheffers *et al.* 2016, Harwood *et al.* 2001, Nunez *et al.* 2019). The Arctic has warmed at twice the global rate (IPCC 2014), and long-term data sets show that substantial reductions in both the extent and

thickness of Arctic sea-ice cover have occurred over the past 40 years (Meier *et al.* 2014, Frey *et al.* 2015). Stroeve *et al.* (2012) estimated that, since 1979, the minimum area of fall Arctic sea-ice declined by over 12 percent per decade through 2010. Record low minimum areas of fall Arctic sea-ice extent were recorded in 2002, 2005, 2007, and 2012. Further, observations of sea-ice in the Beaufort Sea have shown a trend since 2004 of sea-ice break-up earlier in the year, reformation of sea-ice later in the year, and a greater proportion of first-year ice in the ice cover (Galley *et al.* 2016). The overall trend of decline of Arctic sea-ice is expected to continue for the foreseeable future (Stroeve *et al.* 2007, Amstrup *et al.* 2008, Hunter *et al.* 2010, Overland and Wang 2013, 73 FR 28212, May 15, 2008, IPCC 2014). Decline in Arctic sea ice affects Arctic species through habitat loss and altered trophic interactions. These factors may contribute to population distribution changes, population mixing, and pathogen transmission (Post *et al.* 2013), which further impact population health.

For polar bears, sea-ice habitat loss due to climate change has been identified as the primary cause of conservation concern (e.g., Stirling and Derocher 2012, Atwood *et al.* 2016b, USFWS 2016). A 42 percent loss of optimal summer polar bear habitat throughout the Arctic is projected for the decade of 2045–2054 (Durner *et al.* 2009). A recent global assessment of the vulnerability of the 19 polar bear stocks to future climate warming ranked the SBS as one of the three most vulnerable stocks (Hamilton and Derocher 2019). The study, which examined factors such as the size of the stock, continental shelf area, ice conditions, and prey diversity, attributed the high vulnerability of the SBS stock primarily to deterioration of ice conditions. The SBS polar bear stock occurs within the Polar Basin Divergent Ecoregion (PBDE), which is characterized by extensive sea-ice formation during the winters and the sea ice melting and pulling away from the coast during the summers (Amstrup *et al.* 2008). Projections show that polar bear stocks within the PBDE may be extirpated within the next 45–75 years at current rates of sea-ice declines (Amstrup *et al.* 2007, Amstrup *et al.* 2008). Atwood *et al.* (2016) also predicted that polar bear stocks within the PBDE will be more likely to greatly decrease in abundance and distribution as early as the 2020–2030 decade primarily as a result of sea-ice habitat loss.

Sea-ice habitat loss affects the distribution and habitat use patterns of the SBS polar bear stock. When sea ice

melts during the summer, polar bears in the PBDE may either stay on land throughout the summer or move with the sea ice as it recedes northward (Durner *et al.* 2009). The SBS stock, and to a lesser extent the Chukchi Sea stock, are increasingly utilizing marginal habitat (*i.e.*, land and ice over less productive waters) (Ware *et al.* 2017). Polar bear use of Beaufort Sea coastal areas has increased during the fall open-water period (June through October). Specifically, the percentage of radio-collared adult females from the SBS stock utilizing terrestrial habitats has tripled over 15 years, and SBS polar bears arrive onshore earlier, stay longer, and leave to the sea ice later (Atwood *et al.* 2016b). This change in polar bear distribution and habitat use has been correlated with diminished sea ice and the increased distance of the pack ice from the coast during the open-water period (*i.e.*, the less sea ice and the farther from shore the leading edge of the pack ice is, the more bears are observed onshore) (Schliebe *et al.* 2006; Atwood *et al.* 2016b).

The current trend for sea-ice in the SBS region will result in increased distances between the ice edge and land, likely resulting in more bears coming ashore during the open-water period (Schliebe *et al.* 2008). More polar bears on land for a longer period of time may increase both the frequency and the magnitude of polar bear exposure to human activities, including an increase in human–bear interactions (Towns *et al.* 2009, Schliebe *et al.* 2008, Atwood *et al.* 2016b). Polar bears spending more time in terrestrial habitats also increases their risk of exposure to novel pathogens that are expanding north as a result of a warmer Arctic (Atwood *et al.* 2016b, 2017). Heightened immune system activity and more infections (indicated by elevated number of white blood cells) have been reported for the SBS polar bears that summer on land when compared to those on sea ice (Atwood *et al.* 2017; Whiteman *et al.* 2019). The elevation in immune system activity represents additional energetic costs that could ultimately impact stock and individual fitness (Atwood *et al.* 2017; Whiteman *et al.* 2019). Prevalence of parasites such as the nematode *Trichinella nativa* in many Arctic species, including polar bears, pre-dates the recent global warming. However, parasite prevalence could increase as a result of changes in diet (*e.g.*, increased reliance on conspecific scavenging) and feeding habits (*e.g.*, increased consumption of seal muscle) associated with climate-induced reduction of

hunting opportunities for polar bears (Penk *et al.* 2020, Wilson *et al.* 2017).

The continued decline in sea-ice is also projected to reduce connectivity among polar bear stocks and potentially lead to the impoverishment of genetic diversity that is key to maintaining viable, resilient wildlife populations (Derocher *et al.* 2004, Cherry *et al.* 2013, Kutchera *et al.* 2016). The circumpolar polar bear population has been divided into six genetic clusters: The Western Polar Basin (which includes the SBS and CS stocks), the Eastern Polar Basin, the Western and Eastern Canadian Archipelago, and Norwegian Bay (Malenfant *et al.* 2016). There is moderate genetic structure among these clusters, suggesting polar bears broadly remain in the same cluster when breeding. While there is currently no evidence for strong directional gene flow among the clusters (Malenfant *et al.* 2016), migrants are not uncommon and can contribute to gene flow across clusters (Kutschera *et al.* 2016). Changing sea-ice conditions will make these cross-cluster migrations (and the resulting gene flow) more difficult in the future (Kutschera *et al.* 2016).

Additionally, habitat loss from decreased sea-ice extent may impact polar bear reproductive success by reducing or altering suitable denning habitat and extending the polar bear fasting season (Rode *et al.* 2018, Stirling and Derocher 2012, Molnár *et al.* 2020). In the early 1990s, approximately 50 percent of the annual maternal dens of the SBS polar bear stock occurred on land (Amstrup and Gardner 1994). Along the Alaskan region the proportion of terrestrial dens increased from 34.4 percent in 1985–1995 to 55.2 percent in 2007–2013 (Olson *et al.* 2017). Polar bears require a stable substrate for denning. As sea-ice conditions deteriorate and become less stable, sea-ice dens can become vulnerable to erosion from storm surges (Fischbach *et al.* 2007). Under favorable autumn snowfall conditions, SBS females denning on land had higher reproductive success than SBS females denning on sea-ice. Factors that may influence the higher reproductive success of females with land-based dens include longer denning periods that allow cubs more time to develop, higher snowfall conditions that strengthen den integrity throughout the denning period (Rode *et al.* 2018), and increased foraging opportunities on land (e.g., scavenging on Bowhead whale carcasses) (Atwood *et al.* 2016b). While SBS polar bear females denning on land may experience increased reproductive success, at least under favorable snowfall conditions, it is possible that

competition for suitable denning habitat on land may increase due to sea-ice decline (Fischbach *et al.* 2007) and land-based dens may be more vulnerable to disturbance from human activities (Linnell *et al.* 2000).

Polar bear reproductive success may also be impacted by declines in sea ice through an extended fasting season (Molnár *et al.* 2020). By 2100, recruitment is predicted to become jeopardized in nearly all polar bear stocks if greenhouse gas emissions remain uncurbed (RCP8.5 [Representative Concentration Pathway 8.5] scenario) as fasting thresholds are increasingly exceeded due to declines in sea-ice across the Arctic circumpolar range (Molnár *et al.* 2020). As the fasting season increases, most of these 12 stocks, including in the SBS, are expected to first experience significant adverse effects on cub recruitment followed by effects on adult male survival and lastly on adult female survival (Molnár *et al.* 2020). Without mitigation of greenhouse gas emissions and assuming optimistic polar bear responses (e.g., reduced movement to conserve energy), cub recruitment in the SBS stock has possibly been already adversely impacted since the late 1980s while detrimental impacts on male and female survival are forecasted to possibly occur in the late 2030s and 2040s, respectively.

Extended fasting seasons are associated with poor body condition (Stirling and Derocher 2012), and a female's body condition at den entry is a critical factor that determines whether the female will produce cubs and the cubs' chance of survival during their first year (Rode *et al.* 2018). Additionally, extended fasting seasons will cause polar bears to depend more heavily on their lipid reserves for energy, which can release lipid-soluble contaminants, such as persistent organic pollutants and mercury, into the bloodstream and organ tissues. The increased levels of contaminants in the blood and tissues can affect polar bear health and body condition, which has implications for reproductive success and survival (Jenssen *et al.* 2015).

Changes in sea-ice can impact polar bears by altering trophic interactions. Differences in sea-ice dynamics such as the timing of ice formation and breakup, as well as changes in sea-ice type and concentration may impact the distribution of polar bears and/or their prey's occurrence and reduce polar bears' access to prey. A climate-induced reduction in overlap between female polar bears and ringed seals was detected after a sudden sea-ice decline in Norway that limited the ability of

females to hunt on sea-ice (Hamilton *et al.* 2017). While polar bears are opportunistic and hunt other species, their reliance on ringed seals is prevalent across their range (Thiemann *et al.* 2007, 2008; Florko *et al.* 2020; Rode *et al.* 2021). Male and female polar bears exhibit differences in prey consumption. Females typically consume more ringed seals compared to males, which is likely related to more limited hunting opportunities for females (e.g., prey size constraints) (McKinney *et al.* 2017, Bourque *et al.* 2020). Female body condition has been positively correlated with consumption of ringed seals, but negatively correlated with the consumption of bearded seals (Florko *et al.* 2020). Consequently, females are more prone to decreased foraging and reproductive success than males during years in which unfavorable sea-ice conditions limit polar bears' access to ringed seals (Florko *et al.* 2020).

In the SBS stock, adult female and juvenile polar bear consumption of ringed seals was negatively correlated with winter Arctic oscillation, which affects sea-ice conditions. This trend was not observed for male polar bears. Instead, male polar bears consumed more bowhead whale as a result of scavenging the carcasses of subsistence-harvested bowhead whales during years with a longer ice-free period over the continental shelf. It is possible that these alterations in sea-ice conditions may limit female polar bears' access to ringed seals, and male polar bears may rely more heavily on alternative onshore food resources in the southern Beaufort Sea region (McKinney *et al.* 2017). Changes in the availability and distribution of seals may influence polar bear foraging efficiency. Reduction in sea ice is expected to render polar bear foraging energetically more demanding, as moving through fragmented sea ice and open-water swimming require more energy than walking across consolidated sea ice (Cherry *et al.* 2009, Pagano *et al.* 2012, Rode *et al.* 2014, Durner *et al.* 2017). Inefficient foraging can contribute to nutritional stress and poor body condition, which can have implications for reproductive success and survival (Regehr *et al.* 2010).

The decline in Arctic sea ice is associated with the SBS polar bear stock spending more time in terrestrial habitats (Schliebe *et al.* 2008). Recent changes in female denning habitat and extended fasting seasons as a result of sea-ice decline may affect the reproductive success of the SBS polar bear stock (Rode *et al.* 2018; Stirling and Derocher 2012; Molnár *et al.* 2020). Other relevant factors that could

negatively affect the SBS polar bear stock include changes in prey availability, reduced genetic diversity through limited population connectivity and/or hybridization with other bear species, increased exposure to disease and parasite prevalence and/or dissemination, impacts of human activities (oil and gas exploration/extraction, shipping, harvesting, etc.) and pollution (Post *et al.* 2013; Hamilton and Derocher 2019). Based on the projections of sea-ice decline in the Beaufort Sea region and demonstrated impacts on SBS polar bear utilization of sea-ice and terrestrial habitats, the Service anticipates that polar bear use of the Beaufort Sea coast will continue to increase during the open-water season.

For walruses, climate change may affect habitat and prey availability. The loss of Arctic sea ice has affected walrus distribution and habitat use in the Bering and Chukchi Seas (Jay *et al.* 2012). Walruses use sea ice as a breeding site, a location to birth and nurse young, and a protective cover from storms and predation, however, if the sea ice retreats north of the continental shelf break in the Chukchi Sea, walruses can no longer use it for these purposes. Thus, loss of sea ice is associated with increased use of coastal haul-outs during the summer, fall, and early winter (Jay *et al.* 2012). Coastal haul-outs are potentially dangerous for walruses, as they can stampede toward the water when disturbed, resulting in injuries and mortalities (Garlich-Miller *et al.* 2011). Use of land haul-outs is also more energetically costly, with walruses hauled out on land spending more time in water but not foraging than those hauled out on sea ice. This difference has been attributed to an increase in travel time in the water from land haul-outs to foraging areas (Jay *et al.* 2017). Higher walrus abundance at these coastal haul-outs may also increase exposure to environmentally and density-dependent pathogens (Post *et al.* 2013). Climate change impacts through habitat loss and changes in prey availability could affect walrus population stability. It is unknown if walruses will utilize the Beaufort Sea more heavily in the future due to climate change effects; however, considering the low number of walruses observed in the Beaufort Sea (see *Take Estimates for Pacific Walruses and Polar Bears*), it appears that walruses will remain uncommon in the Beaufort Sea for the next 5 years.

### Potential Effects of the Specified Activities on Subsistence Uses

#### Polar Bear

Based on subsistence harvest reports, polar bear hunting is less prevalent in communities on the north coast of Alaska than it is in west coast communities. There are no quotas under the MMPA for Alaska Native polar bear harvest in the Southern Beaufort Sea; however, there is a Native-to-Native agreement between the Inuvialuit in Canada and the Inupiat in Alaska. This agreement, the Inuvialuit-Inupiat Polar Bear Management Agreement, established quotas and recommendations concerning protection of denning females, family groups, and methods of take. Although this Agreement is voluntary in the United States and does not have the force of law, legally enforceable quotas are administered in Canada. In Canada, users are subject to provincial regulations consistent with the Agreement. Commissioners for the Agreement set the original quota at 76 bears in 1988, split evenly between the Inuvialuit in Canada and the Inupiat in the United States. In July 2010, the quota was reduced to 70 bears per year. Subsequently, in Canada, the boundary of the SBS stock with the neighboring Northern Beaufort Sea stock was adjusted through polar bear management bylaws in the Inuvialuit Settlement Region in 2013, affecting Canadian quotas and harvest levels from the SBS stock. The current subsistence harvest established under the Agreement of 56 bears total (35 in the United States and 21 in Canada) reflect this change.

The Alaska Native subsistence harvest of polar bears from the SBS population has declined. From 1990 to 1999, an average of 42 bears were taken annually. The average subsistence harvest decreased to 21 bears annually from 2000–2010 and 11 bears annually from 2015–2020. The reason for the decline of harvested polar bears from the SBS population is unknown. Alaska Native subsistence hunters and harvest reports have not indicated a lack of opportunity to hunt polar bears or disruption by Industry activity.

#### Pacific Walrus

Few walruses are harvested in the Beaufort Sea along the northern coast of Alaska since their primary range is in the Bering and Chukchi Seas. Walruses constitute a small portion of the total marine mammal harvest for the village of Utqiagvik. Hunters from Utqiagvik have harvested 407 walruses since the year 2000 with 65 harvested since 2015.

Walrus harvest from Nuiqsut and Kaktovik is opportunistic. They have reported taking four walruses since 1993. None of the walrus harvests for Utqiagvik, Nuiqsut, or Kaktovik from 2014 to 2020 occurred within the Beaufort Sea ITR region.

### Evaluation of Effects of the Specified Activities on Subsistence Uses

There are three primary Alaska Native communities on the Beaufort Sea whose residents rely on Pacific walruses and polar bears for subsistence use: Utqiagvik, Nuiqsut, and Kaktovik. Utqiagvik and Kaktovik are expected to be less affected by the Industry's proposed activities than Nuiqsut. Nuiqsut is located within 5 mi of ConocoPhillips' Alpine production field to the north and ConocoPhillips' Alpine Satellite development field to the west. However, Nuiqsut hunters typically harvest polar bears from Cross Island during the annual fall bowhead whaling. Cross Island is approximately 16 km (~10 mi) offshore from the coast of Prudhoe Bay. We have received no evidence or reports that bears are altering their habitat use patterns, avoiding certain areas, or being affected in other ways by the existing level of oil and gas activity near communities or traditional hunting areas that would diminish their availability for subsistence use. However, as is discussed in *Evaluation of Effects of Specified Activities on Pacific Walruses, Polar Bears, and Prey Species* below, the Service has found some evidence of fewer maternal polar bear dens near industrial infrastructure than expected.

Changes in Industry activity locations may trigger community concerns regarding the effect on subsistence uses. Industry must remain proactive to address potential impacts on the subsistence uses by affected communities through consultations and, where warranted, POCs. Evidence of communication with the public about proposed activities will be required as part of a LOA. Current methods of communication are variable and include venues such as public forums, which allow communities to express feedback prior to the initiation of operations, the employ of subsistence liaisons, and presentations to regional commissions. If community subsistence use concerns arise from new activities, appropriate mitigation measures, such as cessation of activities in key locations during hunting seasons, are available and will be applied as a part of the POC.

No unmitigable concerns from the potentially affected communities regarding the availability of walruses or polar bears for subsistence uses have

been identified through Industry consultations with the potentially affected communities of Utqiagvik, Kaktovik, or Nuiqsut. During the 2016–2021 ITR period, Industry groups have communicated with Native communities and subsistence hunters through subsistence representatives, community liaisons, and village outreach teams as well as participation in community and commission meetings. Based on information gathered from these sources, it appears that subsistence hunting opportunities for walruses and polar bears have not been affected by past Industry activities conducted pursuant to the 2016–2021 Beaufort ITR, and are not likely to be affected by the proposed activities described in this proposed ITR. Given the similarity between the nature and extent of Industry activities covered by the prior Beaufort Sea ITR and those specified in AOGA's pending Request, and the continued requirement for Industry to consult and coordinate with Alaska Native communities and representative subsistence hunting and co-management organizations (and develop a POC if necessary), we do not anticipate that the activities specified in AOGA's pending Request will have any unmitigable effects on the availability of Pacific walruses or polar bears for subsistence uses.

#### **Potential Effects of the Specified Activities on Pacific Walruses, Polar Bears, and Prey Species**

Industry activities can affect individual walruses and polar bears in numerous ways. Below, we provide a summary of the documented and potential effects of oil and gas industrial activities on both polar bears and walruses. The effects analyzed included harassment, lethal take, and exposure to oil spills.

##### *Polar Bear: Human-Polar Bear Encounters*

Oil and gas industry activities may affect individual polar bears in numerous ways during the open-water and ice-covered seasons. Polar bears are typically distributed in offshore areas associated with multiyear pack ice from mid-November to mid-July. From mid-July to mid-November, polar bears can be found in large numbers and high densities on barrier islands, along the coastline, and in the nearshore waters of the Beaufort Sea, particularly on and around Barter and Cross Islands. This distribution leads to a significantly higher number of human-polar bear encounters on land and at offshore

structures during the open-water period than other times of the year. Bears that remain on the multiyear pack ice are not typically present in the ice-free areas where vessel traffic occurs, as barges and vessels associated with Industry activities travel in open water and avoid large ice floes.

On land, the majority of Industry's bear observations occur within 2 km (1.2 mi) of the coastline. Industry facilities within the offshore and coastal areas are more likely to be approached by polar bears and may act as physical barriers to movements of polar bears. As bears encounter these facilities, the chances for human-bear interactions increase. The Endicott and West Dock causeways, as well as the facilities supporting them, have the potential to act as barriers to movements of polar bears because they extend continuously from the coastline to the offshore facility. However, polar bears have frequently been observed crossing existing roads and causeways. Offshore production facilities, such as Northstar, Spy Island, and Oooguruk, have frequently been approached by polar bears but appear to present only a small-scale, local obstruction to the bears' movement. Of greater concern is the increased potential for human-polar bear interaction at these facilities. Encounters are more likely to occur during the fall at facilities on or near the coast. Polar bear interaction plans, training, and monitoring required by past ITRs have proven effective at reducing human-polar bear encounters and the risks to bears and humans when encounters occur. Polar bear interaction plans detail the policies and procedures that Industry facilities and personnel will implement to avoid attracting and interacting with polar bears as well as minimizing impacts to the bears. Interaction plans also detail how to respond to the presence of polar bears, the chain of command and communication, and required training for personnel. Industry uses technology to aid in detecting polar bears including bear monitors, closed-circuit television, video cameras, thermal cameras, radar devices, and motion-detection systems. In addition, some companies take steps to actively prevent bears from accessing facilities by using safety gates and fences.

The noises, sights, and smells produced by the proposed project activities could disturb and elicit variable responses from polar bears. Noise disturbance can originate from either stationary or mobile sources. Stationary sources include construction,

maintenance, repair and remediation activities, operations at production facilities, gas flaring, and drilling operations. Mobile sources include aircraft traffic, geotechnical surveys, ice road construction, vehicle traffic, tracked vehicles, and snowmobiles.

The potential behavioral reaction of polar bears to the proposed activities can vary by activity type. Camp odors may attract polar bears, potentially resulting in human-bear encounters, unintentional harassment, intentional hazing, or possible lethal take in defense of human life (see 50 CFR 18.34 for further guidance on passive polar bear deterrence measures). Noise generated on the ground by industrial activity may cause a behavioral (e.g., escape response) or physiologic (e.g., increased heart rate, hormonal response) (Harms *et al.* 1997; Tempel and Gutierrez 2003) response. The available studies of polar bear behavior indicate that the intensity of polar bear reaction to noise disturbance may be based on previous interactions, sex, age, and maternal status (Anderson and Aars 2008; Dyck and Baydack 2004).

##### *Polar Bear: Effects of Aircraft Overflights*

Bears on the surface experience increased noise and visual stimuli when planes or helicopters fly above them, both of which may elicit a biologically significant behavioral response. Sound frequencies produced by aircraft will likely fall within the hearing range of polar bears (see Nachtigall *et al.* 2007) and will thus be audible to animals during flyovers or when operating in proximity to polar bears. Polar bears likely have acute hearing with previous sensitivities demonstrated between 1.4–22.5 kHz (tests were limited to 22.5 kHz; Nachtigall *et al.* 2007). This range, which is wider than that seen in humans, supports the idea that polar bears may experience temporary (called temporary threshold shift, or TTS) or permanent (called permanent threshold shift, or PTS) hearing impairment if they are exposed to high-energy sound. While species-specific TTS and PTS thresholds have not been established for polar bears, thresholds have been established for the general group "other marine carnivores" which includes both polar bears and walruses (Southall *et al.* 2019). Through a series of systematic modeling procedures and extrapolations, Southall *et al.* (2019) have generated modified noise exposure thresholds for both in-air and underwater sound (Table 1).

TABLE 1—TEMPORARY THRESHOLD SHIFT (TTS) AND PERMANENT THRESHOLD SHIFT (PTS) THRESHOLDS ESTABLISHED BY SOUTHALL *et al.* (2019) THROUGH MODELING AND EXTRAPOLATION FOR “OTHER MARINE CARNIVORES,” WHICH INCLUDES BOTH POLAR BEARS AND WALRUSES, IN DECIBELS (dB). IMPULSIVE THRESHOLDS ARE PROVIDED FOR SOUND ONSET.

	TTS		PTS	
	non-impulsive	impulsive	non-impulsive	impulsive
Air .....	157 dB	146 dB	177 dB	161 dB
Water .....	199 dB	188 dB	219 dB	203 dB

During an FAA test, test aircraft produced sound at all frequencies measured (50 Hz to 10 kHz) (Healy 1974; Newman 1979). At frequencies centered at 5 kHz, jets flying at 300 m (984 ft) produced ½ octave band noise levels of 84 to 124 dB, propeller-driven aircraft produced 75 to 90 dB, and helicopters produced 60 to 70 dB (Richardson *et al.* 1995). Thus, the frequency and level of airborne sounds typically produced by Industry is unlikely to cause temporary or permanent hearing damage unless marine mammals are very close to the sound source. Although temporary or permanent hearing damage is not anticipated, impacts from aircraft overflights have the potential to elicit biologically significant behavioral responses from polar bears.

Observations of polar bears during fall coastal surveys, which flew at much lower altitudes than typical Industry flights (see *Estimating Take Rates of Aircraft Activities*), indicate that the reactions of non-denning polar bears is typically varied but limited to short-term changes in behavior ranging from no reaction to running away. Bears associated with dens have been shown to increase vigilance, initiate rapid movement, and even abandon dens when exposed to low-flying aircraft (see *Effects to Denning Bears* for further discussion). Aircraft activities can impact bears over all seasons; however, during the summer and fall seasons, aircraft have the potential to disturb both individuals and congregations of polar bears. These onshore bears spend most of their time resting and limiting their movements on land. Exposure to aircraft traffic is expected to result in changes in behavior, such as going from resting to walking or running and therefore, has the potential to be energetically costly. Mitigation measures, such as minimum flight elevations over polar bears and habitat areas of concern as well as flight restrictions around known polar bear aggregations when safe, are included in this proposed ITR to achieve least

practicable adverse impact to polar bears by aircraft.

*Polar Bear: Effects of In-Water Activities*

In-water sources of sound, such as pile driving, screeding, dredging, or vessel movement, may disturb polar bears. In the open-water season, Industry activities are generally limited to relatively ice-free, open water. During this time in the Beaufort Sea, polar bears are typically found either on land or on the pack ice, which limits the chances of the interaction of polar bears with offshore Industry activities. Though polar bears have been observed in open water miles from the ice edge or ice floes, the encounters are relatively rare (although the frequency of such observations may increase due to sea ice change). However, if bears come in contact with Industry operations in open water, the effects of such encounters likely include no more than short-term behavioral disturbance.

While polar bears swim in and hunt from open water, they spend less time in the water than most marine mammals. Stirling (1974) reported that polar bears observed near Devon Island during late July and early August spent 4.1 percent of their time swimming and an additional 0.7 percent engaged in aquatic stalking of prey. More recently, application of tags equipped with time-depth recorders indicate that aquatic activity of polar bears is greater than was previously thought. In a study published by Lone *et al.* (2018), 75 percent of polar bears swam daily during open-water months, with animals spending 9.4 percent of their time in July in the water. Both coastal- and pack-ice-dwelling animals were tagged, and there were no significant differences in the time spent in the water by animals in the two different habitat types. While polar bears typically swim with their ears above water, Lone *et al.* (2018) found polar bears in this study that were fitted with depth recorders (n=6) spent approximately 24 percent of their time in the water with their head underwater.

The pile driving, screeding, dredging, and other in-water activities proposed

by Industry introduce substantial levels of noise into the marine environment. Underwater sound levels from construction along the North Slope have been shown to range from 103 decibels (dB) at 100 m (328 ft) for auguring to 143 dB at 100 m (328 ft) for pile driving (Greene *et al.* 2008) with most of the energy below 100 Hz. Airborne sound levels from these activities range from 65 dB at 100 m (328 ft) for a bulldozer and 81 dB at 100 m (328 ft) for pile driving, with most of the energy for in-air levels also below 100 Hz (Greene *et al.* 2008). Therefore, in-water activities are not anticipated to result in temporary or permanent damage to polar bear hearing.

In 2012, during the open-water season, Shell vessels encountered a few polar bears swimming in ice-free water more than 70 mi (112.6 km) offshore in the Chukchi Sea. In those instances, the bears were observed to either swim away from or approach the Shell vessels. Sometimes a polar bear would swim around a stationary vessel before leaving. In at least one instance a polar bear approached, touched, and investigated a stationary vessel from the water before swimming away.

Polar bears are more likely to be affected by on-ice or in-ice Industry activities versus open-water activities. From 2009 through 2014, there were a few Industry observation reports of polar bears during on-ice activities. Those observations were primarily of bears moving through an area during winter seismic surveys on near-shore ice. The disturbance to bears moving across the surface is frequently minimal, short-term, and temporary due to the mobility of such projects and limited to small-scale alterations to bear movements.

*Polar Bear: Effects to Denning Bears*

Known polar bear dens in the Beaufort Sea ITR region, whether discovered opportunistically or as a result of planned surveys such as tracking marked bears or den detection surveys, are monitored by the Service. However, these known denning sites are only a small percentage of the total

active polar bear dens for the SBS stock in any given year. Each year, Industry coordinates with the Service to conduct surveys to determine the location of Industry's activities relative to known dens and denning habitat. Under past ITRs Industry activities have been required to avoid known polar bear dens by 1.6 km (1 mi). However, occasionally an unknown den may be encountered during Industry activities. When a previously unknown den is discovered in proximity to Industry activity, the Service implements mitigation measures such as the 1.6-km (1-mi) activity exclusion zone around the den and 24-hour monitoring of the site.

The responses of denning bears to disturbance and the consequences of these responses can vary throughout the denning process. Consequently, we divide the denning period into four stages when considering impacts of disturbance: Den establishment, early denning, late denning, and post-emergence.

#### Den Establishment

The den establishment period begins in autumn near the time of implantation when pregnant females begin scouting for, excavating, and occupying a den. The timing of den establishment is likely governed by a variety of environmental factors, including snowfall events (Zedrosser *et al.* 2006; Evans *et al.* 2016; Pigeon *et al.* 2016), accumulation of snowpack (Amstrup and Gardner 1994; Durner *et al.* 2003, 2006), temperature (Rode *et al.* 2018), and timing of sea ice freeze-up (Webster *et al.* 2014). Spatial and temporal variation in these factors may explain variability in the timing of den establishment, which occurs between October and December in the SBS stock (Durner *et al.* 2001; Amstrup 2003). Rode *et al.* (2018) estimated November 15 as the mean date of den entry for bears in the SBS stock.

The den establishment period ends with the birth of cubs in early to mid-winter (Ramsay and Stirling 1988) after a gestation period that is likely similar to the ~60-day period documented for brown bears (Tsubota *et al.* 1987). Curry *et al.* (2015) found the mean and median birth dates for captive polar bears in the Northern Hemisphere were both November 29. Similarly, Messier *et al.* (1994) estimated that most births had occurred by December 15 in the Canadian Arctic Archipelago based on activity levels recorded by sensors on females in maternity dens.

Much of what is known of the effects of disturbance during the den establishment period comes from studies of polar bears captured by

researchers in autumn. Although capture is a severe form of disturbance atypical of events likely to occur during oil and gas activities, responses to capture can inform our understanding of how polar bears respond to substantial levels of disturbance. Ramsay and Stirling (1986) reported that 10 of 13 pregnant females that were captured and collared at dens in October or November abandoned their existing dens. Within 1–2 days after their release, these bears moved a median distance of 24.5 km and excavated new maternal dens. The remaining three polar bears reentered their initial dens or different dens <2 km from their initial den soon after being released. Amstrup (1993, 2003) documented a similar response in Alaska and reported 5 of 12 polar bears abandoned den sites and subsequently denned elsewhere following disturbance during autumn, with the remaining 7 bears remaining at their original den site.

The observed high rate of den abandonment during autumn capture events suggests that polar bears have a low tolerance threshold for intense disturbance during den initiation and are willing to expend energy to avoid further disturbance. Energy expenditures during den establishment are not replenished because female ursids do not eat or drink during denning and instead rely solely on stored body fat (Nelson *et al.* 1983; Spady *et al.* 2007). Consequently, because female body condition during denning affects the size and subsequent survival of cubs at emergence from the den (Derocher and Stirling 1996; Robbins *et al.* 2012), disturbances that cause additional energy expenditures in fall could have latent effects on cubs in the spring.

The available published research does not conclusively demonstrate the extent to which capture or den abandonment during den initiation is consequential for survival and reproduction. Ramsay and Stirling (1986) reported that captures (also known as handling) of females did not significantly affect numbers and mean weights of cubs, but the overall mean litter size and weights of cubs born to previously handled mothers consistently tended to be slightly lower than those of mothers not previously handled. Amstrup (1993) found no significant effect of handling on cub weight, litter size, or survival. Similarly, Seal *et al.* (1970) reported no loss of pregnancy among captive ursids following repeated chemical immobilization and handling. However, Lunn *et al.* (2004) concluded that handling and observations of pregnant female polar bears in the autumn

resulted in significantly lighter female, but not male, cubs in spring. Swenson *et al.* (1997) found that pregnant female grizzly bears (*U. arctos horribilis*) that abandoned excavated dens pre-birth lost cubs at a rate 10 times higher (60%) than bears that did not abandon dens (6%).

Although disturbances during the den establishment period can result in pregnant females abandoning a den site and/or incurring energetic or reproductive costs, fitness consequences are relatively small during this period compared to after the birth of cubs because females are often able to identify and excavate new sites within the temporal period that den establishment occurs under undisturbed conditions (Amstrup 1993; Lunn *et al.* 2004). Consequently, prior to giving birth, disturbances are unlikely to result in injury or a reduction in the probability of survival of a pregnant female or her cubs. However, responses by polar bears to anthropogenic activities can lead to the disruption of biologically-important behaviors associated with denning.

#### Early Denning

The second denning period we identified, early denning, begins with the birth of cubs and ends 60 days after birth. Polar bear cubs are altricial and are among the most undeveloped placental mammals at birth (Ramsay and Dunbrack 1986). Newborn polar bears weigh ~0.6 kg, are blind, and have limited fat reserves and fur, which provides little thermoregulatory value (Blix and Lentfer 1979; Kenny and Bickel 2005). Roughly 2 weeks after birth, their ability to thermoregulate begins to improve as they grow longer guard hairs and an undercoat (Kenny and Bickel 2005). Cubs first open their eyes at approximately 35 days after birth (Kenny and Bickel 2005) and achieve sufficient musculoskeletal development to walk at 60–70 days (Kenny and Bickel 2005), but movements may still be clumsy at this time (Harington 1968). At approximately 2 months of age, their capacity for thermoregulation may facilitate survival outside of the den and is the minimum time required for cubs to be able to survive outside of the den. However, further development inside the den greatly enhances the probability of survival (Amstrup 1993, Amstrup and Gardner 1994, Smith *et al.* 2007, Rode *et al.* 2018). Cubs typically weigh 10–12 kg upon emergence from the den in the spring at approximately 3.5 months old (Harington 1968, Lønø 1970).

Based on these developmental milestones, we consider 60 days after birth to mark the end of the early

denning period. Currently, we are not aware of any studies directly documenting birth dates of polar bear cubs in the wild; however, several studies have estimated parturition based on indirect metrics. Van de Velde *et al.* (2003) evaluated historic records of bears legally harvested in dens. Their findings suggest that cubs were born between early December and early January. Additionally, Messier *et al.* (1994) found that the activity levels of radio-collared females dropped significantly in mid-December, leading the authors to conclude that a majority of births occurred before or around 15 December. Because cub age is not empirically known, we consider early denning to end on 13 February, which is 60 days after the estimated average birth date of 15 December.

Although disturbance to denning bears can be costly at any stage in the denning process, consequences in early denning can be especially high because of the vulnerability of cubs early in their development (Elowe and Dodge 1989, Amstrup and Gardner 1994, Rode *et al.* 2018). If a female leaves a den during early denning, cub mortality is likely to occur due to a variety of factors including susceptibility to cold temperatures (Blix and Lentfer 1979, Hansson and Thomassen 1983, Van de Velde 2003), predation (Derocher and Wiig 1999, Amstrup *et al.* 2006b), and mobility limitations (Lentfer 1975). Thus we can expect a high probability that cubs will suffer lethal take if they emerge early during this stage. Further, adult females that depart the den site during early denning are likely to experience physiological stresses such as increased heart rate (Craighead *et al.* 1976, Laske *et al.* 2011) or increased body temperature (Reynolds *et al.* 1986) that can result in significant energy expenditures (Karprovich *et al.* 2009, Geiser 2013, Evans *et al.* 2016) thus likely resulting in Level B take.

#### Late Denning

The third denning period, late denning, begins when cubs are  $\geq 60$  days old and ends at den emergence in the spring, which coincides with increases in prey availability (Rode *et al.* 2018b). In the SBS, March 15th is the median estimated emergence date for land-denning bears (Rode *et al.* 2018b). During late denning, cubs develop the ability to travel more efficiently and become less susceptible to heat loss, which enhances their ability to survive after leaving the den (Rode *et al.* 2018b). For example, date of den emergence was identified as the most important variable influencing cub survival in a study of marked polar bears in the CS

and SBS stocks (Rode *et al.* 2018b). The authors reported that all females that denned through the end of March had  $\geq$  one cub when re-sighted  $\leq 100$  days after den emergence. Conversely, roughly half of the females that emerged from dens before the end of February did not have cubs when resighted  $\leq 100$  days after emergence, suggesting that later den emergence likely results in a greater likelihood of cub survival (Rode *et al.* 2018b). Rode *et al.* (2018b) do note several factors that could affect their findings; for example, it was not always known whether a female emerged from a den with cubs (*i.e.*, cubs died before re-sighting during the spring surveys).

Although the potential responses of bears to disturbance events (*e.g.*, emerging from dens early, abandoning dens, physiological changes) during early and late denning are the same, consequences to cubs differ based on their developmental progress. In contrast to emergences during early denning, which are likely to result in cub mortality, emergences during late denning do not necessarily result in cub mortality because cubs potentially can survive outside the den after reaching approximately 60 days of age. However, because survival increases with time spent in the den during late denning, disturbances that contribute to an early emergence during late denning are likely to increase the probability of cub mortality, thus leading to a serious injury Level A take. Similar to the early denning period, this form of disturbance would also likely lead to Level B take for adult females.

#### Post-Emergence

The post-emergence period begins at den emergence and ends when bears leave the den site and depart for the sea ice, which can occur up to 30 days after emergence (Harington 1968, Jonkel *et al.* 1972, Kolenoski and Prevett 1980, Hansson and Thomassen 1983, Ovsyanikov 1998, Robinson 2014).

During the post-emergence period, bears spend time in and out of the den where they acclimate to surface conditions and engage in a variety of activities, including grooming, nursing, walking, playing, resting, standing, digging, and foraging on vegetation (Harington 1968; Jonkel *et al.* 1972; Hansson and Thomassen 1983; Ovsyanikov 1998; Smith *et al.* 2007, 2013). While mothers outside the den spend most of their time resting, cubs tend to be more active, which likely increases strength and locomotion (Harington 1968, Lentfer and Hensel 1980, Hansson and Thomassen 1983, Robinson 2014). Disturbances that elicit an early departure from the den site may hinder

the ability of cubs to travel (Ovsyanikov 1998), thereby increasing the chances for cub abandonment (Haroldson *et al.* 2002) or susceptibility to predation (Derocher and Wiig 1999, Amstrup *et al.* 2006b).

Considerable variation exists in the duration of time that bears spend at dens post-emergence, and the relationship between the duration and cub survival has not been formally evaluated. However, a maternal female should be highly motivated to return to the sea ice to begin hunting and replenish her energy stores to support lactation, thus, time spent at the den site post emergence likely confers some fitness benefit to cubs. A disturbance that leads the family group to depart the den site early during this period therefore is likely to lead to a non-serious Level A take for the cubs and a Level B take for the adult female.

#### Walrus: Human-Walrus Encounters

Walruses do not inhabit the Beaufort Sea frequently and the likelihood of encountering walruses during Industry operations is low and limited to the open-water season. During the time period of this proposed ITR, Industry operations may occasionally encounter small groups of walruses swimming in open water or hauled out onto ice floes or along the coast. Industry monitoring data have reported 38 walruses between 1995 and 2015, with only a few instances of disturbance to those walruses (AES Alaska 2015, USFWS unpublished data). From 2009 through 2014, no interactions between walrus and Industry were reported in the Beaufort Sea ITR region. We have no evidence of any physical effects or impacts to individual walruses due to Industry activity in the Beaufort Sea. However, in the Chukchi Sea, where walruses are more prevalent, Level B harassment is known to sometimes occur during encounters with Industry. Thus, if walruses are encountered during the activities proposed in this ITR, the interaction it could potentially result in disturbance.

Human encounters with walruses could occur during Industry activities, although such encounters would be rare due to the limited distribution of walruses in the Beaufort Sea. These encounters may occur within certain cohorts of the population, such as calves or animals under stress. In 2004, a suspected orphaned calf hauled-out on the armor of Northstar Island numerous times over a 48-hour period, causing Industry to cease certain activities and alter work patterns before it disappeared in stormy seas. Additionally, a walrus calf was observed for 15 minutes during

an exploration program 60 ft from the dock at Cape Simpson in 2006. From 2009 through 2020, Industry reported no similar interactions with walruses.

In the nearshore areas of the Beaufort Sea, stationary offshore facilities could produce high levels of noise that have the potential to disturb walruses. These include Endicott, Hilcorp's Saltwater Treatment Plant (located on the West Dock Causeway), Oooguruk, and Northstar facilities. The Liberty project will also have this potential when it commences operations. From 2009 through 2020, there were no reports of walruses hauling out at Industry facilities in the Beaufort Sea ITR region. Previous observations have been reported of walruses hauled out on Northstar Island and swimming near the Saltwater Treatment Plant. In 2007, a female and a subadult walrus were observed hauled-out on the Endicott Causeway. The response of walruses to disturbance stimuli is highly variable. Anecdotal observations by walrus hunters and researchers suggest that males tend to be more tolerant of disturbances than females and individuals tend to be more tolerant than groups. Females with dependent calves are considered least tolerant of disturbances. In the Chukchi Sea, disturbance events are known to cause walrus groups to abandon land or ice haul-outs and occasionally result in trampling injuries or cow-calf separations, both of which are potentially fatal. Calves and young animals at terrestrial haul-outs are particularly vulnerable to trampling injuries. However, due to the scarcity of walrus haul-outs in the ITR area, the most likely potential impacts of Industry activities include displacement from preferred foraging areas, increased stress, energy expenditure, interference with feeding, and masking of communications. Any impact of Industry presence on walruses is likely to be limited to a few individuals due to their geographic range and seasonal distribution.

The reaction of walruses to vessel traffic is dependent upon vessel type, distance, speed, and previous exposure to disturbances. Walruses in the water appear to be less readily disturbed by vessels than walruses hauled out on land or ice. Furthermore, barges and vessels associated with Industry activities travel in open water and avoid large ice floes or land where walruses are likely to be found. In addition, walruses can use a vessel as a haul-out platform. In 2009, during Industry activities in the Chukchi Sea, an adult walrus was observed hauled out on the stern of a vessel.

#### *Walrus: Effects of In-Water Activities*

Walruses hear sounds both in air and in water. They have been shown to hear from 60 hertz (Hz) to 23 kilohertz (kHz) in air (Reichmuth *et al.* 2020). Tests of underwater hearing have shown their range to be between 1 kHz and 12 kHz with greatest sensitivity at 12 kHz (Kastelein *et al.* 2002). The underwater hearing abilities of the Pacific walrus have not been studied sufficiently to develop species-specific criteria for preventing harmful exposure. However, sound pressure level thresholds have been developed for members of the "other carnivore" group of marine mammals (Table 1).

When walruses are present, underwater noise from vessel traffic in the Beaufort Sea may prevent ordinary communication between individuals by preventing them from locating one another. It may also prevent walruses from using potential habitats in the Beaufort Sea and may have the potential to impede movement. Vessel traffic will likely increase if offshore Industry expands and may increase if warming waters and seasonally reduced sea-ice cover alter northern shipping lanes.

The most likely response of walruses to acoustic disturbances in open water will be for animals to move away from the source of the disturbance. Displacement from a preferred feeding area may reduce foraging success, increase stress levels, and increase energy expenditures.

#### *Walrus: Effects of Aircraft Overflights*

Aircraft overflights may disturb walruses. Reactions to aircraft vary with range, aircraft type, and flight pattern as well as walrus age, sex, and group size. Adult females, calves, and immature walruses tend to be more sensitive to aircraft disturbance. Walruses are particularly sensitive to changes in engine noise and are more likely to stampede when planes turn or fly low overhead. Researchers conducting aerial surveys for walruses in sea-ice habitats have observed little reaction to fixed-winged aircraft above 457 m (1,500 ft) (USFWS unpubl. data). Although the intensity of the reaction to noise is variable, walruses are probably most susceptible to disturbance by fast-moving and low-flying aircraft (100 m (328 ft) above ground level) or aircraft that change or alter speed or direction. In the Chukchi Sea, there are recent examples of walruses being disturbed by aircraft flying in the vicinity of haul-outs. It appears that walruses are more sensitive to disturbance when hauled out on land versus sea-ice.

#### *Effects to Prey Species*

Industry activity has the potential to impact walrus prey, which are primarily benthic invertebrates including bivalves, snails, worms, and crustaceans (Sheffield and Grebmeier 2009). The effects of Industry activities on benthic invertebrates would most likely result from disturbance of seafloor substrate from activities such as dredging or screeding, and if oil was illegally discharged into the environment. Substrate-borne vibrations associated with vessel noise and Industry activities, such as pile driving and drilling, can trigger behavioral and physiological responses in bivalves and crustaceans (Roberts *et al.* 2016, Tidau and Briffa 2016). In the case of an oil spill, oil has the potential to impact benthic invertebrate species in a variety of ways including, but not limited to, mortality due to smothering or toxicity, perturbations in the composition of the benthic community, as well as altered metabolic and growth rates. Additionally, bivalves and crustaceans can bioaccumulate hydrocarbons, which could increase walrus exposure to these compounds (Engelhardt 1983). Disturbance from Industry activity and effects from oil exposure may alter the availability and distribution of benthic invertebrate species. An increasing number of studies are examining benthic invertebrate communities and food web structure within the Beaufort Sea (Rand and Logerwell 2011, Divine *et al.* 2015). The low likelihood of an oil spill large enough to affect walrus prey populations (see the section titled *Risk Assessment of Potential Effects Upon Polar Bears from a Large Oil Spill in the Beaufort Sea*) combined with the low density of walruses that feed on benthic invertebrates in this region during open-water season indicates that Industry activities will likely have limited effects on walruses through impacted prey species.

The effects of Industry activity upon polar bear prey, primarily ringed seals and bearded seals, will be similar to that of effects upon walruses and primarily through noise disturbance or exposure to an oil spill. Seals respond to vessel noise and potentially other Industry activities. Some seals exhibited a flush response, entering water when previously hauled out on ice, when noticing an icebreaker vessel that ranged from 100 m to 800 m away from the seal (Lomac-MacNair *et al.* 2019). This disturbance response in addition to other behavioral responses could extend to other Industry vessels and activities, such as dredging (Todd *et al.* 2015). Sounds from Industry activity are

probably audible to ringed seals and harbor seals at distances up to approximately 1.5 km in the water and approximately 5 km in the air (Blackwell *et al.* 2004). Disturbance from Industry activity may cause seals to avoid important habitat areas, such as pupping lairs or haul-outs, and to abandon breathing holes near Industry activity. However, these disturbances appear to have minor, short-term, and temporary effects (NMFS 2013).

Consumption of oiled seals may impact polar bears through their exposure to oil spills during Industry activity (see *Evaluation of Effects on Oil Spills on Pacific Walruses and Polar Bears*). Ingestion of oiled seals would cause polar bears to ingest oil and inhale oil fumes, which can cause tissue and organ damage for polar bears (Engelhardt 1983). If polar bear fur were to become oiled during ingestion of oiled seals, this may lead to thermoregulation issues, increased metabolic activity, and further ingestion of oil during grooming (Engelhardt 1983). Ringed seals that have been exposed to oil or ingested oiled prey can accumulate hydrocarbons in their blubber and liver (Engelhardt 1983). These increased levels of hydrocarbons may affect polar bears even if seals are not oiled during ingestion. Polar bears could be impacted by reduced seal availability, displacement of seals in response to Industry activity, increased energy demands to hunt for displaced seals, and increased dependency on limited alternative prey sources, such as scavenging on bowhead whale carcasses harvested during subsistence hunts. If seal availability were to decrease, then the survival of polar bears may be drastically affected (Fahd *et al.* 2021). However, apart from a large-scale illegal oil spill, impacts from Industry activity on seals are anticipated to be minor and short-term, and these impacts are unlikely to substantially reduce the availability of seals as a prey source for polar bears. The risk of large-scale oil spills is discussed in Risk Assessment of Potential Effects upon Polar Bears from a Large Oil Spill in the Beaufort Sea.

#### Evaluation of Effects of Specified Activities on Pacific Walruses, Polar Bears, and Prey Species

##### Definitions of Incidental Take Under the Marine Mammal Protection Act

Below we provide definitions of three potential types of take of Pacific walruses or polar bears. The Service does not anticipate and is not authorizing Lethal take or Level A harassment as a part of the proposed rule; however, the definitions of these

take types are provided for context and background.

##### Lethal Take

Human activity may result in biologically significant impacts to polar bears or Pacific walruses. In the most serious interactions, human actions can result in mortality of polar bears or Pacific walruses. We also note that, while not considered incidental, in situations where there is an imminent threat to human life, polar bears may be killed. Additionally, though not considered incidental, polar bears have been accidentally killed during efforts to deter polar bears from a work area for safety and from direct chemical exposure (81 FR 52276, August 5, 2016). Incidental lethal take could result from human activity such as a vehicle collision or collapse of a den if it were run over by a vehicle. Unintentional disturbance of a female by human activity during the denning season may cause the female either to abandon her den prematurely with cubs or abandon her cubs in the den before the cubs can survive on their own. Either scenario may result in the incidental lethal take of the cubs. Incidental lethal take of Pacific walrus could occur if the animal were directly struck by a vessel, or trampled by other walruses in a human-caused stampede.

##### Level A Harassment

Human activity may result in the injury of polar bears or Pacific walruses. Level A harassment, for nonmilitary readiness activities, is defined as any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild. Take by Level A harassment can be caused by numerous actions such as creating an annoyance that separates mothers from dependent cub(s)/calves (Amstrup 2003), results in polar bear mothers leaving the den early (Amstrup and Gardner 1994, Rode *et al.* 2018b), or interrupts the nursing or resting of cubs/calves. For this ITR, we have also distinguished between non-serious and serious Level A take. Serious Level A take is defined as an injury that is likely to result in mortality.

Level A harassment to bears on the surface is extremely rare within the ITR region. From 2012 through 2018, one instance of Level A harassment occurred within the ITR region associated with defense of human life while engaged in non-Industry activity. No Level A harassment to Pacific walruses has been reported in the Beaufort Sea ITR region. Given this information, the Service does not estimate Level A harassment to polar bears or Pacific walruses will

result from the activities specified in AOGA's Request. Nor has Industry anticipated or requested authorization for such take in their Request for ITRs.

##### Level B Harassment

Level B Harassment for nonmilitary readiness activities means any act of pursuit, torment, or annoyance that has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behaviors or activities, including, but not limited to, migration, breathing, nursing, feeding, or sheltering. Changes in behavior that disrupt biologically significant behaviors or activities for the affected animal meet the criteria for take by Level B harassment under the MMPA. Reactions that indicate take by Level B harassment of polar bears in response to human activity include, but are not limited to, the following:

- Fleeing (running or swimming away from a human or a human activity);
- Displaying a stress-related behavior such as jaw or lip-popping, front leg stomping, vocalizations, circling, intense staring, or salivating;
- Abandoning or avoiding preferred movement corridors such as ice floes, leads, polynyas, a segment of coastline, or barrier islands;
- Using a longer or more difficult route of travel instead of the intended path;
- Interrupting breeding, sheltering, or feeding;
- Moving away at a fast pace (adult) and cubs struggling to keep up;
- Ceasing to nurse or rest (cubs);
- Ceasing to rest repeatedly or for a prolonged period (adults);
- Loss of hunting opportunity due to disturbance of prey; or
- Any interruption in normal denning behavior that does not cause injury, den abandonment, or early departure of the family group from the den site.

This list is not meant to encompass all possible behaviors; other behavioral responses may equate to take by Level B harassment. Relatively minor changes in behavior such as increased vigilance or a short-term change in direction of travel are not likely to disrupt biologically important behavioral patterns, and the Service does not view such minor changes in behavior as resulting in a take by Level B harassment. It is also important to note that depending on the duration, frequency, or severity of the above-described behaviors, such responses could constitute take by Level A harassment (e.g., repeatedly disrupting a polar bear versus a single interruption).

### Evaluation of Take

The general approach for quantifying take in this proposed ITR was as follows: (1) Determine the number of animals in the project area; (2) assess the likelihood, nature, and degree of exposure of these animals to project-relative activities; (3) evaluate these animals' probable responses; and (4) calculate how many of these responses constitute take. Our evaluation of take included quantifying the probability of either lethal take or Level A harassment (potential injury) and quantifying the number of responses that met the criteria for Level B harassment (potential disruption of a biologically significant behavioral pattern), factoring in the degree to which effective mitigation measures that may be applied will reduce the amount or consequences of take. To better account for differences in how various aspects of the project could impact polar bears, we performed separate take estimates for Surface-Level Impacts, Aircraft Activities, Impacts to Denning Bears, and Maritime Activities. These analyses are described in more detail in the subsections below. Once each of these categories of take were quantified, the next steps were to: (5) Determine whether the total take will be of a small number relative to the size of the stock; and (6) determine whether the total take will have a negligible impact on the stock, both of which are determinations required under the MMPA.

### Pacific Walrus: All Interactions

With the low occurrence of walruses in the Beaufort Sea and the adoption of the mitigation measures required by this ITR, if finalized, the Service concludes that the only anticipated effects from Industry noise in the Beaufort Sea would be short-term behavioral

alterations of small numbers of walruses. All walrus encounters within the ITR geographic area in the past 10 years have been of solitary walruses or groups of two. The closest sighting of a grouping larger than two was outside the ITR area in 2013. The vessel encountered a group of 15 walrus. Thus, while it is highly unlikely that a group of walrus will be encountered during the proposed activities, we estimate that no more than one group of 15 Pacific walruses will be taken as a result of Level B harassment each year during the proposed ITR period.

### Polar Bear: Surface Interactions

#### Encounter Rate

The most comprehensive dataset of human-polar bear encounters along the coast of Alaska consists of records of Industry encounters during activities on the North Slope submitted to the Service under existing and previous ITRs. This database is referred to as the “LOA database” because it aggregates data reported by the oil and gas industry to the Service pursuant to the terms and conditions of LOAs issued under current and previous incidental take regulations (50 CFR part 18, subpart J). We have used records in the LOA database in the period 2014–2018, in conjunction with bear density projections for the entire coastline, to generate quantitative encounter rates in the project area. This five-year period was used to provide metrics that reflected the most recent patterns of polar bear habitat use within the Beaufort Sea ITR region. Each encounter record includes the date and time of the encounter, a general description of the encounter, number of bears encountered, latitude and longitude, weather variables, and a take determination made by the Service. If

latitude and longitude were not supplied in the initial report, we georeferenced the encounter using the location description and a map of North Slope infrastructure.

#### Spatial Partitioning the North Slope Into “Coastal” and “Inland” Zones

The vast majority of SBS polar bear encounters along the Alaskan coast occur along the shore or immediately offshore (Atwood *et al.* 2015, Wilson *et al.* 2017). Thus, encounter rates for inland operations should be significantly lower than those for offshore or coastal operations. To partition the North Slope into “coastal” and “inland” zones, we calculated the distance to shore for all encounter records in the period 2014–2018 in the Service’s LOA database using a shapefile of the coastline and the *dist2Line* function found in the R *geosphere* package (Hijmans 2019). Linked sightings of the same bear(s) were removed from the analysis, and individual records were created for each bear encountered. However, because we were able to identify and remove only repeated sightings that were designated as linked within the database, it is likely that some repeated encounters of the same bear remained in our analysis. Of the 1,713 bears encountered from 2014 through 2018, 1,140 (66.5 percent) of the bears were offshore. While these bears were encountered offshore, the encounters were reported by onshore or island operations (*i.e.*, docks, drilling and production islands, or causeways). We examined the distribution of bears that were onshore and up to 10 km (6.2 mi) inland to determine the distance at which encounters sharply decreased (Figure 2).

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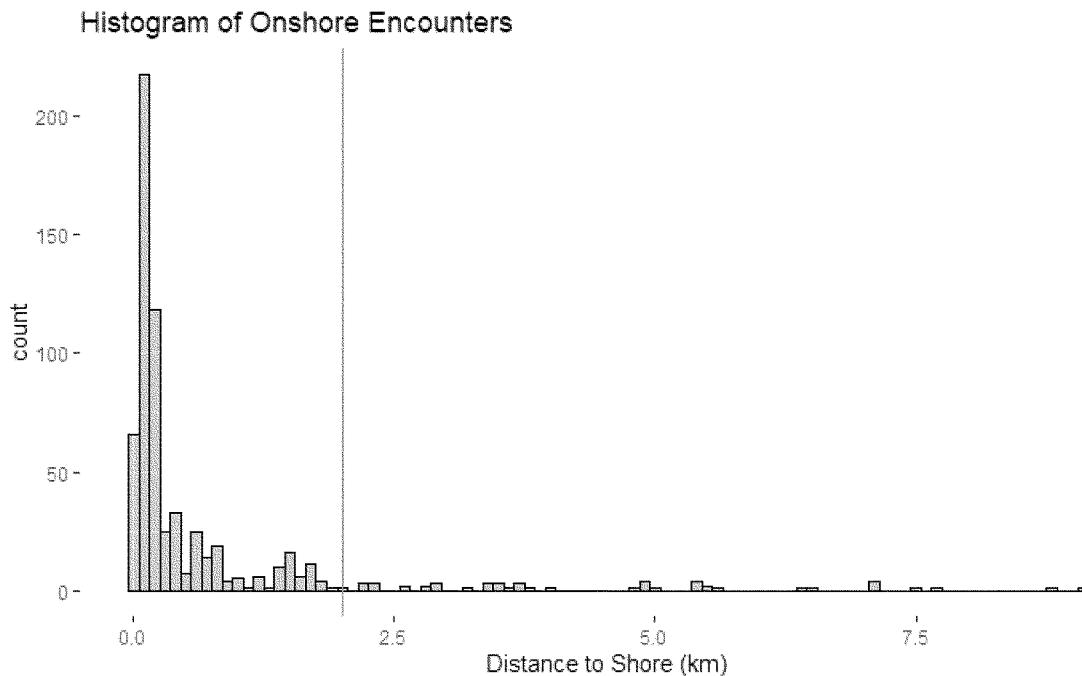


Figure 2—Distribution of onshore polar bear encounters on the North Slope of Alaska in the period 2014–2018 by distance to shore (km). The decrease in encounters was used to designate a “coastal” zone up to 2.0 km (1.2 mi) from shore and an “inland” zone greater than 2.0 km (1.2 mi) from shore.

The histogram illustrates a steep decline in human-polar bear encounters at 2 km (1.2 mi) from shore. Using this data, we divided the North Slope into the “coastal zone,” which includes offshore operations and up to 2 km (1.2 mi) inland, and the “inland zone,” which includes operations more than 2 km (1.2 mi) inland.

#### Dividing the Year Into Seasons

As we described in our review of polar bear biology above, the majority of

polar bears spend the winter months on the sea ice, leading to few polar bear encounters on the shore during this season. Many of the proposed activities are also seasonal, and only occur either in the winter or summer months. In order to develop an accurate estimate of the number of polar bear encounters that may result from the proposed activities, we divided the year into seasons of high bear activity and low bear activity using the Service’s LOA

database. Below is a histogram of all bear encounters from 2014 through 2018 by day of the year (Julian date). Two clear seasons of polar bear encounters can be seen: An “open-water season” that begins in mid-July and ends in mid-November, and an “ice season” that begins in mid-November and ends in mid-July. The 200th and 315th days of the year were used to delineate these seasons when calculating encounter rates (Figure 3).

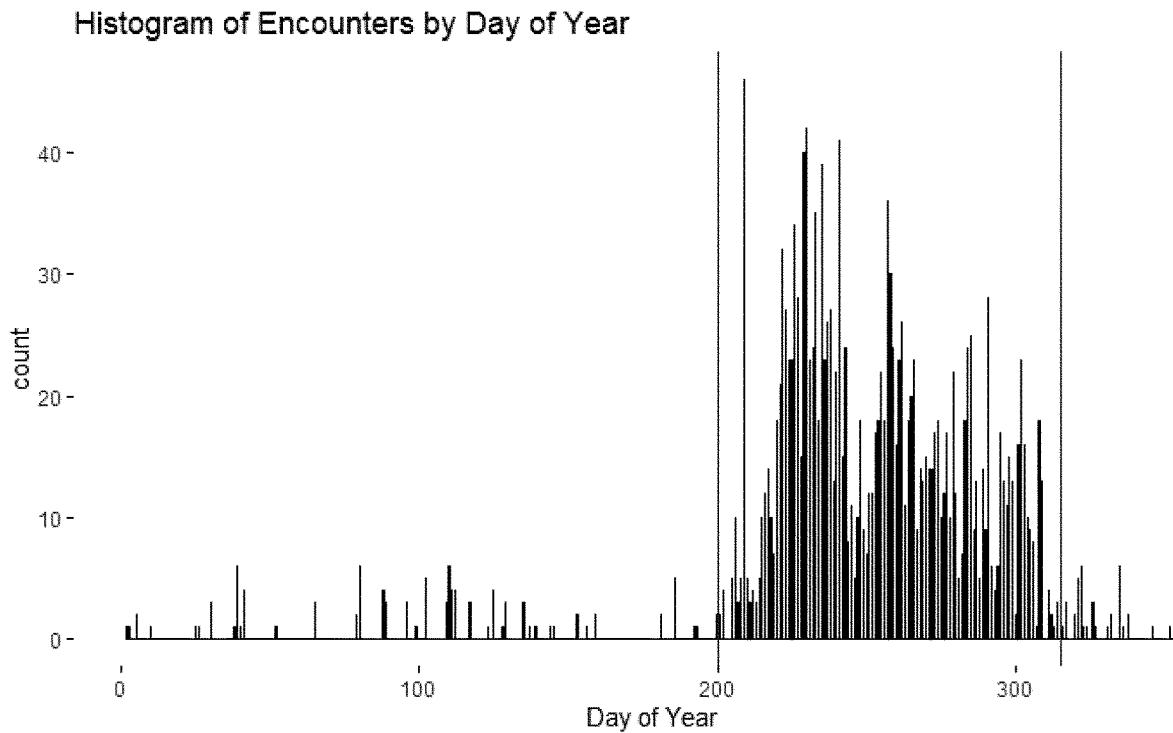


Figure 3—Distribution of polar bear encounters in the Southern Beaufort Sea and adjacent North Slope of Alaska in the period 2014–2018 by Julian day of year. Dotted lines delineate the “open” vs. “ice” seasons. Open season begins on the 200<sup>th</sup> day of the year (July 19<sup>th</sup>) and ends on the 315<sup>th</sup> day of the year (November 11<sup>th</sup>).

#### North Slope Encounter Rates

Encounter rates in bears/season/km<sup>2</sup> were calculated using a subset of the

Industry encounter records maintained in the Service's LOA database. The

following formula was used to calculate encounter rate (Equation 1):

$$\frac{\text{Bears Encountered by Season}}{\text{Area Occupied (km}^2\text{)}} \quad \text{Equation 1}$$

The subset consisted of encounters in areas that were constantly occupied year-round to prevent artificially inflating the denominator of the equation and negatively biasing the encounter rate. To identify constantly occupied North Slope locations, we gathered data from a number of sources. We used past LOA applications to find descriptions of projects that occurred anywhere within 2014–2018 and the final LOA reports to determine the

projects that proceeded as planned and those that were never completed. Finally, we relied upon the institutional knowledge of our staff, who have worked with operators and inspected facilities on the North Slope. To determine the area around industrial facilities in which a polar bear can be seen and reported, we queried the USFWS LOA database for records that included the distance to an encountered polar bear. It is important to note that

these values may represent the closest distance a bear came to the observer or the distance at initial contact. Therefore, in some cases, the bear may have been initially encountered farther than the distance recorded. The histogram of these values shows a drop in the distance at which a polar bear is encountered at roughly 1.6 km (1 mi) (Figure 4).

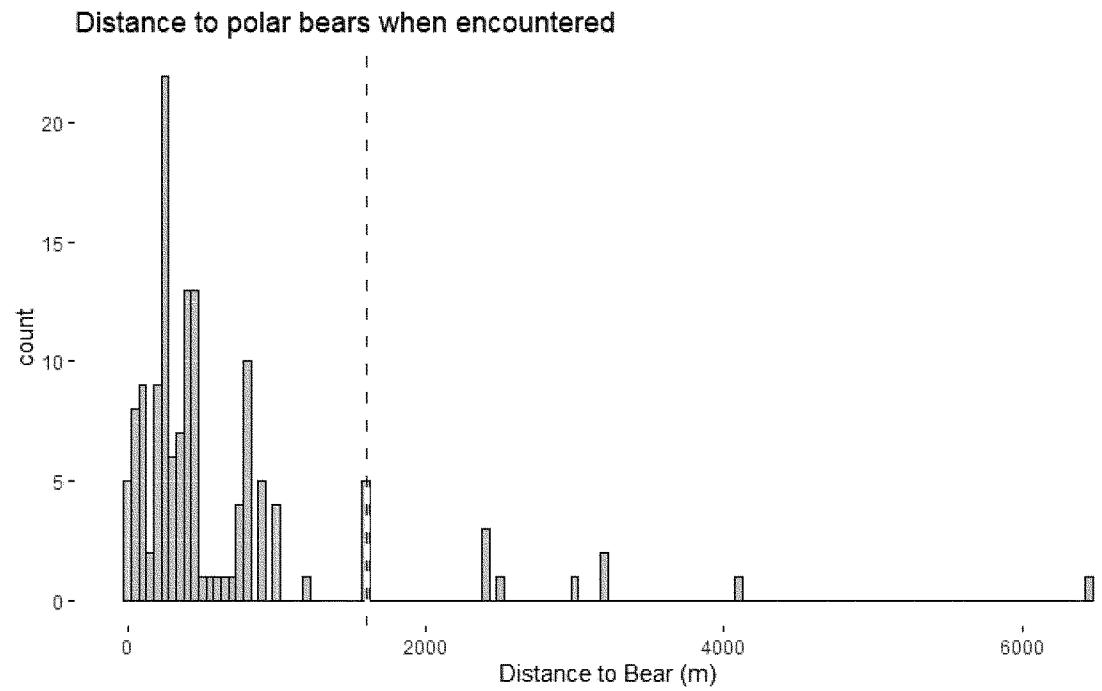


Figure 4—Distribution of polar bear encounters on the North Slope of Alaska in the period 2014–2018 by distance to bear (m).

Using this information, we buffered the 24-hour occupancy locations listed above by 1.6 km (1 mi) and calculated an overall search area for both the coastal and inland zones. The coastal

and inland occupancy buffer shapefiles were then used to select encounter records that were associated with 24-hour occupancy locations, resulting in the number of bears encountered per

zone. These numbers were then separated into open-water and ice seasons (Table 2).

TABLE 2—SUMMARY OF ENCOUNTERS OF POLAR BEARS ON THE NORTH SLOPE OF ALASKA IN THE PERIOD 2014–2018 WITHIN 1.6 KM (1 MI) OF THE 24-HOUR OCCUPANCY LOCATIONS AND SUBSEQUENT ENCOUNTER RATES FOR COASTAL (a) AND INLAND (b) ZONES

Year	Ice season encounters	Open-water season encounters
<b>(A) Coastal Zone (Area = 133 km<sup>2</sup>)</b>		
2014 .....	2	193
2015 .....	8	49
2016 .....	4	227
2017 .....	7	313
2018 .....	13	205
Average .....	6.8	197.4
Seasonal Encounter Rate .....	0.05 bears/km <sup>2</sup>	1.48 bears/km <sup>2</sup>
<b>(B) Inland Zone (Area = 267 km<sup>2</sup>)</b>		
2014 .....	3	3
2015 .....	0	0
2016 .....	0	2
2017 .....	3	0
2018 .....	0	2
Average .....	1.2	1.4
Seasonal Encounter Rate .....	0.004 bears/km <sup>2</sup>	0.005 bears/km <sup>2</sup>

## Harassment Rate

The Level B harassment rate or the probability that an encountered bear will experience either incidental or intentional Level B harassment, was calculated using the 2014–2018 dataset from the LOA database. A binary logistic regression of harassment regressed upon distance to shore was not significant ( $p = 0.65$ ), supporting the use of a single harassment rate for both the coastal and inland zones. However, a binary logistic regression of harassment regressed upon day of the year was significant. This significance held when encounters were binned into

either ice or open-water seasons ( $p < 0.0015$ ).

We subsequently estimated the harassment rate for each season with a Bayesian probit regression with season as a fixed effect (Hooten and Hefley 2019). Model parameters were estimated using 10,000 iterations of a Markov chain Monte Carlo algorithm composed of Gibbs updates implemented in R (R core team 2021, Hooten and Hefley 2019). We used Normal (0,1) priors, which are uninformative on the prior predictive scale (Hobbs and Hooten 2015), to generate the distribution of open-water and ice-season marginal posterior predictive probabilities of harassment. The upper 99 percent

quantile of each probability distribution can be interpreted as the upper limit of the potential harassment rate supported by our dataset (*i.e.*, there is a 99 percent chance that given the data the harassment rate is lower than this value). We chose to use 99 percent quantiles of the probability distributions to account for any negative bias that has been introduced into the dataset through unobserved harassment or variability in the interpretation of polar bear behavioral reactions by multiple observers. The final harassment rates were 0.19 during the open-water season and 0.37 during the ice season (Figure 5).

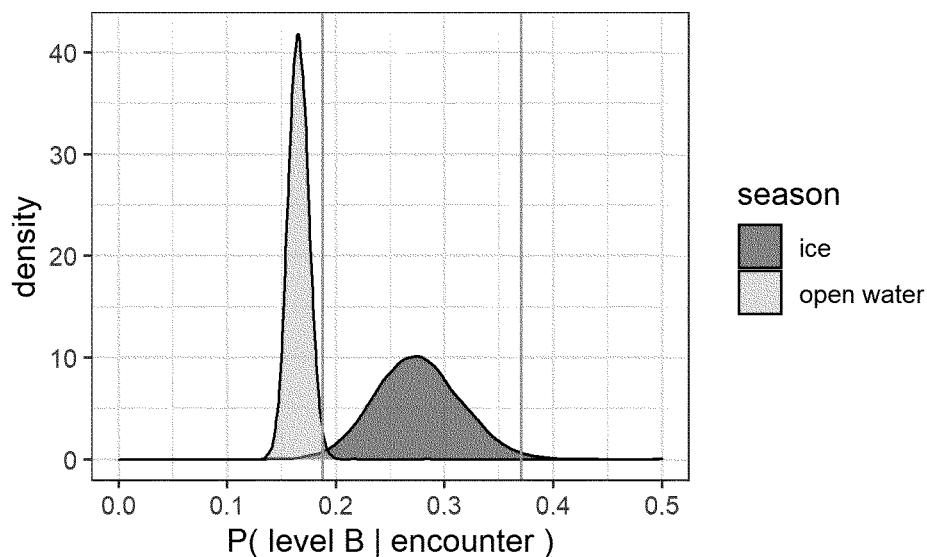


Figure 5—Estimated marginal posterior predictive probabilities from the Bayesian probit regression of Level B harassment of polar bears on the North Slope of Alaska in the period 2014–2018. Vertical grey lines correspond to the upper 99% quantiles for each distribution, which were used as the estimates of harassment rates.

## BILLING CODE 4333-15-C

### Impact Area

As noted above, we have calculated encounter rates depending on the distance from shore and season and take rates depending on season. To properly assess the area of potential impact from the project activities, we must calculate the area affected by project activities to such a degree that harassment is possible. This is sometimes referred to as a zone or area of influence. Behavioral response rates of polar bears to disturbances are highly variable, and data to support the relationship between distance to bears and disturbance is limited. Dyck and Baydack (2004) found

sex-based differences in the frequencies of vigilant bouts of polar bears in the presence of vehicles on the tundra. However, in their summary of polar bear behavioral response to ice-breaking vessels in the Chukchi Sea, Smulter *et al.* (2016) found no difference between reactions of males, females with cubs, or females without cubs. During the Service's coastal aerial surveys, 99 percent of polar bears that responded in a way that indicated possible Level B harassment (polar bears that were running when detected or began to run or swim in response to the aircraft) did so within 1.6 km (1 mi), as measured from the ninetieth percentile horizontal detection distance from the flight line.

Similarly, Andersen and Aars (2008) found that female polar bears with cubs (the most conservative group observed) began to walk or run away from approaching snowmobiles at a mean distance of 1,534 m (0.95 mi). Thus, while future research into the reaction of polar bears to anthropogenic disturbance may indicate a different zone of potential impact is appropriate, the current literature suggests 1.6 km (1.0 mi) will likely encompass the majority of polar bear harassment events.

### Correction Factor

While the locations that were used to calculate encounter rates are thought to

have constant human occupancy, it is possible that bears may be in the vicinity of industrial infrastructure and not be noticed by humans. These unnoticed bears may also experience Level B harassment. To determine whether our calculated encounter rate should be corrected for unnoticed bears, we compared our encounter rates to Wilson *et al.*'s (2017) weekly average polar bear estimates along the northern coast of Alaska and the South Beaufort Sea.

Wilson *et al.*'s weekly average estimate of polar bears across the coast was informed by aerial surveys conducted by the Service in the period 2000–2014 and supplemented by daily counts of polar bears in three high-density barrier islands (Cross, Barter, and Cooper Islands). Using a Bayesian hierarchical model, the authors estimated 140 polar bears would be along the coastline each week between the months of August and October. These estimates were further partitioned into 10 equally sized grids along the coast. Grids 4–7 overlap the SBS ITR

area, and all three encompass several industrial facilities. Grid 6 was estimated to account for 25 percent of the weekly bear estimate (35 bears); however, 25 percent of the bears in grid 6 were located on Cross Island. Grids 5 and 7 were estimated to contain seven bears each, weekly. Using raw aerial survey data, we calculated the number of bears per km of surveyed mainland and number of bears per km of surveyed barrier islands for each Service aerial survey from 2010 through 2014 to determine the proportion of bears on barrier islands versus the mainland. On average, 1.7 percent, 7.2 percent, and 14 percent of bears were sighted on the mainland in grids 5, 6, and 7, respectively.

While linked encounter records in the LOA database were removed in earlier formatting, it is possible that a single bear may be the focus of multiple encounter records, particularly if the bear moves between facilities operated by different entities. To minimize repeated sightings, we designated a single industrial infrastructure location

in each grid: Oliktok Point in grid 5, West Beach in grid 6, and Point Thomson's CP in grid 7. These locations were determined in earlier analyses to have constant 24-occupancy; thus, if a polar bear were within the viewing area of these facilities, it must be reported as a condition of each entity's LOA.

Polygons of each facility were buffered by 1.6 km (1 mi) to account for the industrial viewing area (see above), and then clipped by a 400-m (0.25-mi) buffer around the shoreline to account for the area in which observers were able to reliably detect polar bears in the Service's aerial surveys (*i.e.*, the specific area to which the Wilson *et al.*'s model predictions applied). Industrial encounters within this area were used to generate the average weekly number of polar bears from August through October. Finally, we divided these numbers by area to generate average weekly bears/km<sup>2</sup> and multiplied this number by the total coastal Service aerial survey area. The results are summarized in the table below (Table 3).

TABLE 3—COMPARISON OF POLAR BEAR ENCOUNTERS TO NUMBER OF POLAR BEARS PROJECTED BY WILSON *et al.* 2017 AT DESIGNATED POINT LOCATIONS ON THE COAST OF THE NORTH SLOPE OF ALASKA

	Grid 5	Grid 6	Grid 7
Total coastline viewing area (km <sup>2</sup> ) .....	34	45	33.4
Industry viewing area (km <sup>2</sup> ) .....	0.31	0.49	1.0
Proportion of coastline area viewed by point location .....	0.009	0.011	0.030
Average number of bears encountered August–October at point location .....	3.2	4.6	28.8
Number of weeks in analysis .....	13	13	13
Average weekly number of bears <i>reported</i> at point location .....	0.246	0.354	2.215
Average weekly number of bears projected in grid* .....	7	26	7
Average weekly number of bears <i>projected</i> for point location .....	0.064	0.283	0.210

These comparisons show a greater number of industrial sightings than would be estimated by the Wilson *et al.* 2017 model. There are several potential explanations for higher industrial encounters than projected by model results. Polar bears may be attracted to industrial infrastructure, the encounters documented may be multiple sightings of the same bear, or specifically for the Point Thomson location, higher numbers of polar bears may be travelling past the pad to the Kaktovik whale carcass piles. However, because the number of polar bears estimated within the point locations is lower than the average number of industrial sightings, these findings cannot be used to create a correction factor for industrial encounter rate. To date, the data needed to create such a correction factor (*i.e.*, spatially explicit polar bear densities across the North Slope) have not been generated.

#### Estimated Harassment

We estimated Level B harassment using the spatio-temporally specific encounter rates and temporally specific take rates derived above in conjunction with AOGA supplied spatially and temporally specific data. Table 4 provides the definition for each variable used in the take formulas.

TABLE 4—DEFINITIONS OF VARIABLES USED IN TAKE ESTIMATES OF POLAR BEARS ON THE COAST OF THE NORTH SLOPE OF ALASKA

Variable	Definition
$B_{es}$ .....	bears encountered in an area of interest for the entire season.
$a_c$ .....	coastal exposure area.
$a_i$ .....	inland exposure area.
$r_o$ .....	occupancy rate.
$e_{co}$ .....	coastal open-water season bear-encounter rate in bears/season.

TABLE 4—DEFINITIONS OF VARIABLES USED IN TAKE ESTIMATES OF POLAR BEARS ON THE COAST OF THE NORTH SLOPE OF ALASKA—Continued

Variable	Definition
$e_{ci}$ .....	coastal ice season bear-encounter rate in bears/season.
$e_{io}$ .....	inland open-water season bear-encounter rate in bears/season.
$e_{ii}$ .....	inland ice season bear-encounter rate in bears/season.
$t_i$ .....	ice season harassment rate.
$t_o$ .....	open-water season harassment rate.
$B_t$ .....	number of estimated Level B harassment events.
$B_T$ .....	total bears harassed for activity type.

The variables defined above were used in a series of formulas to ultimately estimate the total harassment from surface-level interactions.

Encounter rates were originally calculated as bears encountered per square kilometer per season (see *North Slope Encounter Rates* above). As a part of their application, AOGA provided the Service with digital geospatial files that included the maximum expected human occupancy (*i.e.*, rate of occupancy ( $r_o$ )) for each individual structure (*e.g.*, each road, pipeline, well pad, etc.) of their proposed activities for each month of the ITR period. Months were averaged to create open-water and ice-season occupancy rates. For example, occupancy rates for July 2022, August 2022, September 2022, October 2022, and November 2022 were averaged to calculate the occupancy rate for a given structure during the open-water 2022

season. Using the buffer tool in ArcGIS, we created a spatial file of a 1.6-km (1-mi) buffer around all industrial structures. We binned the structures according to their seasonal occupancy rates by rounding them up into tenths (10 percent, 20 percent, etc.). We determined impact area of each bin by first calculating the area within the buffers of 100 percent occupancy locations. We then removed the spatial footprint of the 100 percent occupancy buffers from the dataset and calculated the area within the 90 percent occupancy buffers. This iterative process continued until we calculated the area within all buffers. The areas of impact were then clipped by coastal and inland zone shapefiles to determine the

coastal areas of impact ( $a_c$ ) and inland areas of impact ( $a_i$ ) for each activity category. We then used spatial files of the coastal and inland zones to determine the area in coastal versus inland zones for each occupancy percentage. This process was repeated for each season from open-water 2021 to open-water 2026.

Impact areas were multiplied by the appropriate encounter rate to obtain the number of bears expected to be encountered in an area of interest per season ( $B_{es}$ ). The equation below (Equation 3) provides an example of the calculation of bears encountered in the ice season for an area of interest in the coastal zone.

$$B_{es} = a_c * e_{ci}$$

### Equation 3

To generate the number of estimated Level B harassments for each area of interest, we multiplied the number of

bears in the area of interest per season by the proportion of the season the area

is occupied, the rate of occupancy, and the harassment rate (Equation 4).

$$B_t = B_{es} * S_p * r_o * t_i$$

### Equation 4

The estimated harassment values for the open-water 2021 and open-water 2026 seasons were adjusted to account for incomplete seasons as the proposed regulations will be effective for only 85 and 15 percent of the open-water 2021 and 2026 seasons, respectively.

#### Aircraft Impact to Surface Bears

Polar bears in the project area will likely be exposed to the visual and auditory stimulation associated with AOGA's fixed-wing and helicopter flight plans; however, these impacts are likely to be minimal and not long-lasting to surface bears. Flyovers may cause disruptions in the polar bear's normal behavioral patterns, thereby resulting in incidental Level B harassment. Sudden changes in direction, elevation, and movement may also increase the level of noise produced from the helicopter, especially at lower altitudes. This increased level of noise could disturb polar bears in the area to an extent that their behavioral patterns are disrupted

and Level B harassment occurs. Mitigation measures, such as minimum flight altitudes over polar bears and restrictions on sudden changes to helicopter movements and direction, will be required if these regulations are finalized to reduce the likelihood that polar bears are disturbed by aircraft. Once mitigated, such disturbances are expected to have no more than short-term, temporary, and minor impacts on individual bears.

#### Estimating Harassment Rates of Aircraft Activities

To predict how polar bears will respond to fixed-wing and helicopter overflights during North Slope oil and gas activities, we first examined existing data on the behavioral responses of polar bears during aircraft surveys conducted by the Service and U.S. Geological Survey (USGS) between August and October during most years from 2000 to 2014 (Wilson *et al.* 2017, Atwood *et al.* 2015, and Schliebe *et al.*

2008). Behavioral responses due to sight and sound of the aircraft have both been incorporated into this analysis as there was no ability to differentiate between the two response sources during aircraft survey observations. Aircraft types used for surveys during the study included a fixed-wing Aero-Commander from 2000 to 2004, a R-44 helicopter from 2012 to 2014, and an A-Star helicopter for a portion of the 2013 surveys. During surveys, all aircraft flew at an altitude of approximately 90 m (295 ft) and at a speed of 150 to 205 km per hour (km/h) or 93 to 127 mi per hour (mi/h). Reactions indicating possible incidental Level B harassment were recorded when a polar bear was observed running from the aircraft or began to run or swim in response to the aircraft. Of 951 polar bears observed during coastal aerial surveys, 162 showed these reactions, indicating that the percentage of Level B harassments during these low-altitude

coastal survey flights was as high as 17 percent.

Detailed data on the behavioral responses of polar bears to the aircraft and the distance from the aircraft each polar bear was observed were available for only the flights conducted between 2000 to 2004 ( $n = 581$  bears). The Aero-Commander 690 was used during this period. The horizontal detection distance from the flight line was recorded for all groups of bears detected. To determine if there was an effect of distance on the probability of a response indicative of potential Level B harassment, we modeled the binary behavioral response by groups of bears to the aircraft with Bayesian probit regression (Hooten and Hefley 2019). We restricted the data to those groups observed less than 10 km from the aircraft, which is the maximum distance at which behavioral responses were likely to be reliably recorded. In nearly all cases when more than one bear was encountered, every member of the group exhibited the same response, so we treated the group as the sampling unit, yielding a sample size of 346 groups. Of those, 63 exhibited behavioral responses. Model parameters were estimated using 10,000 iterations of a Markov chain Monte Carlo algorithm composed of Gibbs updates implemented in R (R core team 2021, Hooten and Hefley 2019). Normal (0,1) priors, which are uninformative on the prior predictive scale (Hobbs and Hooten 2015), were placed on model parameters. Distance to bear as well as squared distance (to account for possible non-linear decay of probability with distance) were included as covariates. However, the 95 percent credible intervals for the estimated coefficients overlapped zero suggesting no significant effect of distance on polar bears' behavioral responses. While it is likely that bears do respond differently to aircraft at different distances, the data available is heavily biased towards very short distances because the coastal surveys are designed to observe bears immediately along the coast. We were thus unable to detect any effect of distance. Therefore, to estimate a single rate of harassment, we fit an intercept-only model and used the distribution of the marginal posterior predictive

probability to compute a point estimate. Because the data from the coastal surveys were not systematically collected to study polar bear behavioral responses to aircraft, the data likely bias the probability of behavioral response low. We, therefore, chose the upper 99th percentile of the distribution as our point estimate of the probability of potential harassment. This equated to a harassment rate of 0.23. Because we were not able to detect an effect of distance, we could not correlate behavioral responses with profiles of sound pressure levels for the Aero-Commander (the aircraft used to collect the survey data). Therefore, we could also not use that relationship to extrapolate behavioral responses to sound profiles for takeoffs and landings nor sound profiles of other aircraft. Accordingly, we applied the single harassment rate to all portions of all aircraft flight paths.

#### General Approach To Estimating Harassment for Aircraft Activities

Aircraft information was determined using details provided in AOGA's Request, including flight paths, flight take-offs and landings, altitudes, and aircraft type. More information on the altitudes of future flights can be found in the Request. If no location or frequency information was provided, flight paths were approximated based on the information provided. Of the flight paths that were described clearly or were addressed through assumptions, we marked the approximate flight path start and stop points using ArcGIS Pro (version 2.4.3), and the paths were drawn. For flights traveling between two airstrips, the paths were reviewed and duplicated as closely as possible to the flight logs obtained from [www.FlightAware.com](http://www.FlightAware.com) (FlightAware), a website that maintains flight logs in the public domain. For flight paths where airstrip information was not available, a direct route was assumed. Activities such as pipeline inspections followed a route along the pipeline with the assumption the flight returned along the same route unless a more direct path was available.

Flight paths were broken up into segments for landing, take-off, and traveling to account for the length of time the aircraft may be impacting an

area based on flight speed. The distance considered the "landing" area is based on approximately 4.83 km (3 mi) per 305 m (1,000 ft) of altitude descent speed. For all flight paths at or exceeding an altitude of 152.4 m (500 ft), the "take-off" area was marked as 2.41 km (1.5 mi) derived from flight logs found through FlightAware, which suggested that ascent to maximum flight altitude took approximately half the time of the average descent. The remainder of the flight path that stretches between two air strips was considered the "traveling" area. We then applied the exposure area of 1,610 m (1 mi) along the flight paths. The data used to estimate the probability of Level B harassments due to aircraft (see section *Estimating Harassment Rates of Aircraft Activities*) suggested 99% of groups of bears were observed within 1.6 km of the aircraft.

We then differentiated the coastal and inland zones. The coastal zone was the area offshore and within 2 km (1.2 mi) of the coastline (see section *Spatially Partitioning the North Slope into "coastal" and "inland" zones*), and the inland zone was anything greater than 2 km (1.2 mi) from the coastline. We calculated the areas in square kilometers for the exposure area within the coastal zone and the inland zone for all take-offs, landings, and traveling areas. For flights that involve an inland and a coastal airstrip, we considered landings to occur at airstrips within the coastal zone. Seasonal encounter rates developed for both the coastal and inland zones (see section *Search Effort Buffer*) were applied to the appropriate segments of each flight path.

Surface encounter rates were calculated based on the number of bears per season (see section *Search Effort Buffer*). To apply these rates to aircraft activities, we needed to calculate a proportion of the season in which aircraft were flown. However, the assumption involved in using a seasonal proportion is that the area is impacted for an entire day (*i.e.*, for 24 hours). Therefore, to prevent estimating impacts along the flight path over periods of time where aircraft are not present, we calculated a proportion of the day the area will be impacted by aircraft activities for each season (Table 5).

TABLE 5—VARIABLE DEFINITIONS AND CONSTANT VALUES USED IN POLAR BEAR HARASSMENT ESTIMATES FOR WINTER AND SUMMER AIRCRAFT ACTIVITIES ON THE COAST OF THE NORTH SLOPE OF ALASKA

Variable	Definition	Value
$d_s$	days in each season .....	open-water season = 116, ice season = 249
$S_p$	proportion of the season an area of interest is impacted .....	varies by flight.
$f$	flight frequency .....	varies by flight.

TABLE 5—VARIABLE DEFINITIONS AND CONSTANT VALUES USED IN POLAR BEAR HARASSMENT ESTIMATES FOR WINTER AND SUMMER AIRCRAFT ACTIVITIES ON THE COAST OF THE NORTH SLOPE OF ALASKA—Continued

Variable	Definition	Value
$D_{p(LT)}$	proportion of the day landing/take-off areas are impacted by aircraft activities.	varies by flight.
$t_{LT}$	amount of time an aircraft is impacting landing/take-off areas within a day ...	10 minutes per flight.
$D_{p(TR)}$	proportion of the day traveling areas are impacted by aircraft activities .....	varies by flight.
$t_{TR}$	amount of time an aircraft is impacting traveling areas .....	1.5 minutes per 3.22 km [2 mi] segment per flight.
$x$	number of 3.22-km (2-mi) segments within each traveling area .....	varies by flight.
$B_{es}$	bears encountered in an area of interest for the entire season .....	varies by flight.
$B_i$	bears impacted by aircraft activities .....	varies by flight.
$a_c$	coastal exposure area .....	1,610 m (1 mi).
$a_i$	inland exposure area .....	1,610 m (1 mi).
$e_{co}$	coastal open-water season bear-encounter rate in bears/season .....	3.45 bears/km <sup>2</sup> /season.
$e_{ci}$	coastal ice season bear-encounter rate in bears/season .....	0.118 bears/km <sup>2</sup> /season.
$e_{io}$	inland open-water season bear-encounter rate in bears/season .....	0.0116 bears/km <sup>2</sup> /season.
$e_{ii}$	inland ice season bear-encounter rate in bears/season .....	0.0104 bears/km <sup>2</sup> /season.
$t_a$	aircraft harassment rate .....	0.23.
$B_t$	number of estimated level B harassments .....	varies by flight.

The number of times each flight path was flown (*i.e.*, flight frequency) was determined from the application. We used the description combined with the

approximate number of weeks and months within the open-water season and the ice season to determine the total number of flights per season for each

year ( $f$ ). We then used flight frequency and number of days per season ( $d_s$ ) to calculate the seasonal proportion of flights ( $S_p$ ; Equation 6).

$$S_p = \frac{f}{d_s}$$

Equation 6

After we determined the seasonal proportion of flights, we estimated the amount of time an aircraft would be impacting the landing/take-off areas within a day ( $t_{LT}$ ). Assuming an aircraft is not landing at the same time another is taking off from the same airstrip, we

estimated the amount of time an aircraft would be present within the landing or take-off zone would be  $t_{LT} = 10$  minutes. We then calculated how many minutes within a day an aircraft would be impacting an area and divided by the number of minutes within a 24-hour

period (1,440 minutes). This determined the proportion of the day in which a landing/take-off area is impacted by an aircraft for each season ( $D_{p(LT)}$ ; Equation 7).

$$D_{p(LT)} = \frac{S_p * t_{LT}}{1440}$$

Equation 7

To estimate the amount of time an aircraft would be impacting the travel areas ( $t_{TR}$ ), we calculated the minimum amount of time it would take for an aircraft to travel the maximum exposure area at any given time, 3.22 km (2.00 mi). We made this estimate using average aircraft speeds at altitudes less than 305 m (1,000 ft) to account for

slower flights at lower altitudes, such as summer cleanup activities and determined it would take approximately 1.5 minutes. We then determined how many 3.22-km (2-mi) segments are present along each traveling path ( $x$ ). We determined the total number of minutes an aircraft would be impacting any 3.22-km (2-mi) segment along the

travel area in a day and divided by the number of minutes in a 24-hour period. This calculation determined the proportion of the day in which an aircraft would impact an area while traveling during each season ( $D_{p(TR)}$ ; Equation 8).

$$D_{p(TR)} = \frac{S_p * (t_{TR} * x)}{1440}$$

Equation 8

We then used observations of behavioral reactions from aerial surveys (see section *Estimating Harassment Rates of Aircraft Activities*) to determine the appropriate harassment rate in the exposure area (1,610 m (1 mi) from the center of the flight line; see above in this

section). The harassment rate areas were then calculated separately for the landing and take-off areas along each flight path as well as the traveling area for all flights with altitudes at or below 457.2 m (1,500 ft).

To estimate number of polar bears harassed due to aircraft activities, we

first calculated the number of bears encountered ( $B_{es}$ ) for the landing/take-off and traveling sections using both coastal ( $e_{ci}$  or  $co$ ) and inland ( $e_{ii}$  or  $io$ ) encounter rates within the coastal ( $a_c$ ) and inland ( $a_i$ ) exposure areas (Equation 9).

$$B_{es} = (e_{ci} \text{ or } co * a_c) + (e_{ii} \text{ or } io * a_i)$$

### Equation 9

Using the calculated number of coastal and inland bears encountered for each season, we applied the daily seasonal proportion for both landings/take-offs and traveling areas to

determine the daily number of bears impacted due to aircraft activities ( $B_i$ ). We then applied the aircraft harassment rate ( $t_a$ ) associated with the exposure area (see section *Estimating Harassment*

*Rates of Aircraft Activities*), resulting in a number of bears harassed during each season ( $B_t$ ; Equation 10). Harassment associated with AIR surveys was analyzed separately.

$$B_t = B_i * t_a$$

### Equation 10

#### *Analysis Approach for Estimating Harassment During Aerial Infrared Surveys*

Typically, during every ice season Industry conducts polar bear den surveys using AIR. Although the target for these surveys is polar bear dens, bears on the surface can be impacted by the overflights. These surveys are not conducted along specific flight paths and generally overlap previously flown areas within the same trip. Therefore, the harassment estimates for surface bears during AIR surveys were estimated using a different methodology.

Rather than estimate potential flight paths, we used the maximum amount of flight time that is likely to occur for AIR surveys during each year. The period of AIR surveys lasts November 25th to January 15th (52 days), and we

estimated a maximum of 6 hours of flight time per day, resulting in a total of 312 flight hours per year. To determine the amount of time AIR flights are likely to survey coastal and inland zones, we found the area where industry activities and denning habitat overlap and buffered by 1.6 km (1 mi). We then split the buffered denning habitat by zone and determined the proportion of coastal and inland denning habitat. Using this proportion, we estimated the number of flight hours spent within each zone and determined the proportion of the ice season in which AIR surveys were impacting the survey areas (see *General Approach to Estimating Harassment for Aircraft Activities*). We then estimated the aircraft footprint to determine the area that would be impacted at any given time as well as the area accounting for two take-offs and two landings. Using

the seasonal bear encounter rates for the appropriate zones multiplied by the area impacted and the proportion of the season AIR flights were flown, we determined the number of bears encountered. We then applied the aircraft harassment rate to the number of bears encountered per zone to determine number of bears harassed.

#### Estimated Harassment From Aircraft Activities

Using the approach described in *General Approach to Estimating Harassment for Aircraft Activities* and *Analysis Approach for Estimating Harassment during Aerial Infrared Surveys*, we estimated the total number of bears expected to be harassed by the aircraft activities included in the analyses during the proposed Beaufort Sea ITR period of 2021–2026 (Table 6).

TABLE 6—ESTIMATED LEVEL B HARASSMENT OF POLAR BEARS ON THE NORTH SLOPE OF ALASKA BY YEAR AS A RESULT OF AIRCRAFT OPERATIONS DURING THE 2021–2026 PROPOSED ITR PERIOD

	21–22	22–23	23–24	24–25	25–26	26	Total
Est. Harassment .....	0.89	0.95	0.95	1.09	1.09	0.15	5.45

Average estimated polar bear harassments per year = 1.09 bears.

#### *Methods for Modeling the Effects of Den Disturbance*

#### Case Studies Analysis

To assess the likelihood and degree of exposure and predict probable responses of denning polar bears to

activities proposed in the AOGA application, we characterized, evaluated, and prioritized a series of rules and definitions towards a predictive model based on knowledge of published and unpublished information on denning ecology, behavior, and cub

survival. Contributing information came from literature searches in several major research databases and data compiled from polar bear observations submitted by the oil and gas Industry. We considered all available scientific and observational data we could find on

polar bear denning behavior and effects of disturbance.

From these sources, we identified 57 case studies representing instances where polar bears at a maternal den may have been exposed to human activities. For each den, we considered the four denning periods separately, and for each period, determined whether adequate information existed to document

whether (1) the human activity met our definition of an exposure and (2) the response of the bear(s) could be classified according to our rules and definitions. From these 57 dens, 80 denning period-specific events met these criteria. For each event, we classified the type and frequency (*i.e.*, discrete or repeated) of the exposure,

the response of the bear(s), and the level of take associated with that response. From this information, we calculated the probability that a discrete or repeated exposure would result in each possible level of take during each denning period, which informed the probabilities for outcomes in the simulation model (Table 7).

TABLE 7—PROBABILITY THAT A DISCRETE OR REPEATED EXPOSURE ELICITED A RESPONSE BY DENNING POLAR BEARS THAT WOULD RESULT IN LEVEL B HARASSMENT, LEVEL A HARASSMENT (INCLUDING SERIOUS AND NON-SERIOUS INJURY), OR LETHAL TAKE

[Level B harassment was applicable to both adults and cubs, if present; Level A harassment and lethal take were applicable to cubs only. Probabilities were calculated from the analysis of 57 case studies of polar bear responses to human activity. Cells with NAs indicate these types of take were not possible during the given denning period]

Exposure type	Period	None	Level B	Non-serious Level A	Serious Level A	Lethal
Discrete .....	Den Establishment .....	0.400	0.600	NA	NA	NA
	Early Denning .....	1.000	0.000	NA	NA	0.000
	Late Denning .....	0.091	0.000	NA	0.909	0.000
	Post-emergence .....	0.000	0.000	0.750	NA	0.250
Repeated .....	Den Establishment .....	1.000	0.000	NA	NA	NA
	Early Denning .....	0.800	0.000	NA	NA	0.200
	Late Denning .....	0.708	0.000	NA	0.292	0.000
	Post-emergence .....	0.000	0.267	0.733	NA	0.000

#### Case Study Analysis Definitions

Below, we provide definitions for terms used in this analysis, a general overview of denning chronology and periods (details are provided in the Potential Effects to Pacific Walrus, Polar Bears and Prey Species: *Effects on denning bears*), and the rules established for using the case studies to inform the model.

#### Exposure and Response Definitions

**Exposure:** Any human activity within 1.6 km (1 mi) of a polar bear den site. In the case of aircraft, an overflight within 457 m (0.3 mi) above ground level.

**Discrete exposure:** An exposure that occurs only once and of short duration (<30 minutes). It can also be a short-duration exposure that happens repeatedly but that is separated by sufficient time that exposures can be treated as independent (*e.g.*, aerial pipeline surveys that occur weekly).

**Repeated exposure:** An exposure that occurs more than once within a time period where exposures cannot be considered independent or an exposure that occurs due to continuous activity during a period of time (*e.g.*, traffic along a road, or daily visits to a well pad).

**Response probability:** The probability that an exposure resulted in a response by denning polar bears.

We categorized each exposure into categories based on polar bear response:

- **No response:** No observed or presumed behavioral or physiological response to an exposure.

- **Likely physiological response:** An alteration in the normal physiological function of a polar bear (*e.g.*, elevated heart rate or stress hormone levels) that is typically unobservable but is likely to occur in response to an exposure.

- **Behavioral response:** A change in behavior in response to an exposure. Behavioral responses can range from biologically insignificant (*e.g.*, a resting bear raising its head in response to a vehicle driving along a road) to substantial (*e.g.*, cub abandonment) and concomitant levels of take vary accordingly.

#### Timing Definitions

**Entrance date:** The date a female first enters a maternal den after excavation is complete.

**Emergence date:** The date a maternal den is first opened and a bear is exposed directly to external conditions. Although a bear may exit the den completely at emergence, we considered even partial-body exits (*e.g.*, only a bear's head protruding above the surface of the snow) to represent emergence in order to maintain consistency with dates derived from temperature sensors on collared bears (*e.g.*, Rode *et al.* 2018b). For dens located near regularly occurring human activity, we considered the first day a bear was observed near a den to be the emergence

date unless other data were available to inform emergence dates (*e.g.*, GPS collar data).

**Departure date:** The date when bears leave the den site to return to the sea ice. If a bear leaves the den site after a disturbance but later returns, we considered the initial movement to be the departure date.

#### Definition of Various Denning Periods

**Den establishment period:** Period of time between the start of maternal den excavation and the birth of cubs. Unless evidence indicates otherwise, all dens that are excavated by adult females in the fall or winter are presumed to be maternal dens. In the absence of other information, this period is defined as denning activity prior to December 1 (*i.e.*, estimated earliest date cubs are likely present in dens (Derocher *et al.* 1992, Van de Velde *et al.* 2003)).

**Early denning period:** Period of time from the birth of cubs until they reach 60 days of age and are capable of surviving outside the den. In the absence of other information, this period is defined as any denning activity occurring between December 1 and February 13 (*i.e.*, 60 days after 15 December, the estimated average date of cub birth; Van de Velde *et al.* 2003, Messier *et al.* 1994).

**Late denning period:** Period of time between when cubs reach 60 days of age and den emergence. In the absence of other information, this period is defined

as any denning activity occurring between 14 February and den emergence.

**Post-emergence period:** Period of time between den emergence and den site departure. We considered a “normal” duration at the den site between emergence and departure to be greater than or equal to 8 days and classified departures that occurred post emergence “early” if they occurred less than 8 days after emergence.

#### Descriptions of Potential Outcomes

**Cub abandonment:** Occurs when a female leaves all or part of her litter, either in the den or on the surface, at any stage of the denning process. We classified events where a female left her cubs but later returned (or was returned by humans) as cub abandonment.

**Early emergence:** Den emergence that occurs as the result of an exposure (see ‘Rules’ below).

**Early departure:** Departure from the den site post-emergence that occurs as the result of an exposure (see ‘Rules’ below).

#### Predictive Model Rules for Determining Den Outcomes and Assigning Take

- We considered any exposure in a 24-hour period that did not result in a Level A harassment or lethal take to potentially be a Level B harassment take if a behavioral response was observed. However, multiple exposures do not result in multiple Level B harassment takes unless the exposures occurred in two different denning periods.

- If comprehensive dates of specific exposures are not available and daily exposures were possible (e.g., the den was located within 1.6 km [1 mi] of an ice road), we assumed exposures occurred daily.

- In the event of an exposure that resulted in a disturbance to denning bears, take was assigned for each bear (*i.e.*, female and each cub) associated with that den. Whereas assigned take for cubs could range from Level B harassment to lethal take, for adult females only Level B harassment was possible.

- In the absence of additional information, we assumed dens did not contain cubs prior to December 1 but did contain cubs on or after December 1.

- If an exposure occurred and the adult female subsequently abandoned her cubs, we assigned a lethal take for each cub.

- If an exposure occurred during the early denning period and bears emerged from the den before cubs reached 60 days of age, we assigned a lethal take for each cub. In the absence of information

about cub age, a den emergence that occurred between December 1 and February 13 was considered to be an early emergence and resulted in a lethal take of each cub.

- If an exposure occurred during the late denning period (*i.e.*, after cubs reached 60 days of age) and bears emerged from the den before their intended (*i.e.*, undisturbed) emergence date, we assigned a serious injury Level A harassment take for each cub. In the absence of information about cub age and intended emergence date (which was known only for simulated dens), den emergences that occurred between (and including) February 14 and March 14 were considered to be early emergences and resulted in a non-serious injury Level A harassment take of each cub. If a den emergence occurred after March 14 but was clearly linked to an exposure (e.g., bear observed emerging from the den when activity initiated near the den), we considered the emergence to be early and resulted in a serious injury Level A harassment take of each cub.

- For dens where emergence was not classified as early, if an exposure occurred during the post-emergence period and bears departed the den site prior to their intended (*i.e.*, undisturbed) departure date, we assigned a non-serious injury Level A harassment take for each cub. In the absence of information about the intended departure date (which was known only for simulated dens), den site departures that occurred less than 8 days after the emergence date were considered to be early departures and resulted in a non-serious injury Level A harassment take of each cub.

#### Den Simulation

We simulated dens across the entire north slope of Alaska, ranging from the areas identified as denning habitat (Blank 2013, Durner *et al.* 2006, 2013) contained within the National Petroleum Reserve—Alaska (NPRA) in the west to the Canadian border in the east. While AOGA’s Request does not include activity inside the Arctic National Wildlife Refuge (ANWR), we still simulated dens in that area to ensure that any activities directly adjacent to the refuge that might impact denning bears inside the refuge would be captured. To simulate dens on the landscape, we relied on the estimated number of dens in three different regions of northern Alaska provided by Atwood *et al.* (2020). These included the NPRA, the area between the Colville and Canning Rivers (CC), and ANWR. The mean estimated number of dens in each region during a given winter were

as follows: 12 dens (95% CI: 3–26) in the NPRA, 26 dens (95% CI: 11–48) in the CC region, and 14 dens (95% CI: 5–30) in ANWR (Atwood *et al.* 2020). For each iteration of the model (described below), we drew a random sample from a gamma distribution for each of the regions based on the above parameter estimates, which allowed uncertainty in the number of dens in each area to be propagated through the modeling process. Specifically, we used the method of moments (Hobbs and Hooten 2015) to develop the shape and rate parameters for the gamma distributions as follows: NPRA ( $12^2/5.8^2, 12/5.8^2$ ), CC ( $26^2/9.5^2, 26/9.5^2$ ), and ANWR ( $14^2/6.3^2, 14/6.3^2$ ).

Because not all areas in northern Alaska are equally used for denning and some areas do not contain the requisite topographic attributes required for sufficient snow accumulation for den excavation, we did not randomly place dens on the landscape. Instead, we followed a similar approach to that used by Wilson and Durner (2020) with some additional modifications to account for differences in denning ecology in the CC region related to a preference to den on barrier islands and a general (but not complete) avoidance of actively used industrial infrastructure. Using the USGS polar bear den catalogue (Durner *et al.* 2020), we identified polar bear dens that occurred on land in the CC region and that were identified either by GPS-collared bears or through systematic surveys for denning bears (Durner *et al.* 2020). This resulted in a sample of 37 dens of which 22 (*i.e.*, 60 percent) occurred on barrier islands. For each iteration of the model, we then determined how many of the estimated dens in the CC region occurred on barrier islands versus the mainland.

To accomplish this, we first took a random sample from a binomial distribution to determine the expected number of dens from the den catalog (Durner *et al.* 2020) that should occur on barrier islands in the CC region during that given model iteration:

$n_{barrier} = \text{Binomial}(37, 22/37)$ , where 37 represents the total number of dens in the den catalogue (Durner *et al.* 2020) in the CC region suitable for use (as described above) and 22/37 represents the observed proportion of dens in the CC region that occurred on barrier islands. We then divided  $n_{barrier}$  by the total number of dens in the CC region suitable for use (*i.e.*, 37) to determine the proportion of dens in the CC region that should occur on barrier islands (*i.e.*,  $p_{barrier}$ ). We then multiplied  $p_{barrier}$  with the simulated number of dens in the CC region (rounded to the nearest whole number) to determine how many dens

were simulated to occur on barriers islands in the region.

In the NPRA, the den catalogue (Durner *et al.* 2020) data indicated that two dens occurred outside of defined denning habitat (Durner *et al.* 2013), so we took a similar approach as with the barrier islands to estimate how many dens occur in areas of the NPRA with the den habitat layer during each iteration of the model;

$n_{habitat} \sim \text{Binomial}(15, 13/15)$ , where 15 represents the total number of dens in NPRA from the den catalogue (Durner *et al.* 2020) suitable for use (as described above), and 13/15 represents the observed proportion of dens in NPRA that occurred in the region with den habitat coverage (Durner *et al.* 2013). We then divided  $n_{habitat}$  by the total number of dens in NPRA from the den catalogue (*i.e.*, 15) to determine proportion of dens in the NPRA region that occurred in the region of the den habitat layer ( $p_{habitat}$ ). We then multiplied  $p_{habitat}$  with the simulated number of dens in NPRA (rounded to the nearest whole number) to determine the number of dens in NPRA that occurred in the region with the den

habitat layer. Because no infrastructure exists and no activities are proposed to occur in the area of NPRA without the den habitat layer, we only considered the potential impacts of activity to those dens simulated to occur in the region with denning habitat identified (Durner *et al.* 2013).

To account for the potential influence of industrial activities and infrastructure on the distribution of polar bear selection of den sites, we again relied on the subset of dens from the den catalogue (Durner *et al.* 2020) discussed above. We further restricted the dens to only those occurring on the mainland because no permanent infrastructure occurred on barrier islands with identified denning habitat (Durner *et al.* 2006). We then determined the minimum distance to permanent infrastructure that was present when the den was identified. This led to an estimate of a mean minimum distance of dens to infrastructure being 21.59 km (SD = 16.82). From these values, we then parameterized a gamma distribution:  $\text{Gamma}(21.59^2/16.82^2, 21.59/16.82^2)$ . We then obtained 100,000 samples from this distribution

and created a discretized distribution of distances between dens and infrastructure. We created 2.5-km intervals between 0 and 45 km, and one bin for areas >45 km greater than 45 km from infrastructure and determined the number of samples that occurred within each distance bin. We then divided the number of samples in each bin by the total number of samples to determine the probability of a simulated den occurring in a given distance bin. The choice of 2.5 km for distance bins was based on a need to ensure that kernel density grid cells occurred in each distance bin.

To inform where dens are most likely to occur on the landscape, we developed a kernel density map by using known den locations in northern Alaska identified either by GPS-collared bears or through systematic surveys for denning bears (Durner *et al.* 2020). To approximate the distribution of dens, we used an adaptive kernel density estimator (Terrell and Scott 1992) applied to  $n$  observed den locations, which took the form

$$f(\mathbf{s}) \propto \frac{\theta}{n} \sum_i^n k\left(\frac{\mathbf{s}-\mathbf{s}_i}{h(\mathbf{s})}\right), \text{ where the adaptive bandwidth } h(\mathbf{s}) = (\beta_0 + \beta_1 I(\mathbf{s}_i \in \mathcal{M})I(\mathbf{s} \in \mathcal{M}))\beta_2$$

for the location of the  $i$ th den and each location  $\mathbf{s}$  in the study area. The indicator functions allowed the bandwidth to vary abruptly between the mainland  $M$  and barrier islands. The kernel  $k$  was the Gaussian kernel, and the parameters  $\theta$ ,  $\beta_0$ ,  $\beta_1$ ,  $\beta_2$  were chosen based on visual assessment so that the density estimate approximated the observed density of dens and our understanding of likely den locations in areas with low sampling effort.

The kernel density map we used for this analysis differs slightly from the version used in previous analyses, specifically our differentiation of barrier islands from mainland habitat. We used this modified version because previous analyses did not require us to consider denning habitat in the CC region, which has a significant amount of denning that occurs on barrier islands compared to the other two regions. If barrier islands were not differentiated for the kernel density estimate, density from the barrier island dens would spill over

onto the mainland, which was deemed to be biologically unrealistic given the clear differences in den density between the barrier islands and the mainland in the region. For each grid cell in the kernel density map within the CC region, we then determined the minimum distance to roads and pads that had occupancy  $\geq 0.50$  identified by AOGA during October through December (*i.e.*, the core period when bears were establishing their dens). We restricted the distance to infrastructure component to only the CC region because it is the region that contains the vast majority of oil and gas infrastructure and has had some form of permanent industrial infrastructure present for more than 50 years. Thus, denning polar bears have had a substantial amount of time to modify their selection of where to den related to the presence of human activity.

To simulate dens on the landscape, we first sampled in which kernel grid cell a den would occur based on the

underlying relative probability (Figure 6) within a given region using a multinomial distribution. Once a cell was selected, the simulated den was randomly placed on the denning habitat (Blank 2013, Durner *et al.* 2006, 2013) located within that grid cell. For dens being simulated on mainland in the CC region, an additional step was required. We first assigned a simulated den a distance bin using a multinomial distribution of probabilities of being located in a given distance bin based on the discretized distribution of distances described above. Based on the distance to infrastructure bin assigned to a simulated den, we subset the kernel density grid cells that occurred in the same distance bin and then selected a grid cell from that subset based on their underlying probabilities using a multinomial distribution. Then, similar to other locations, a den was randomly placed on denning habitat within that grid cell.

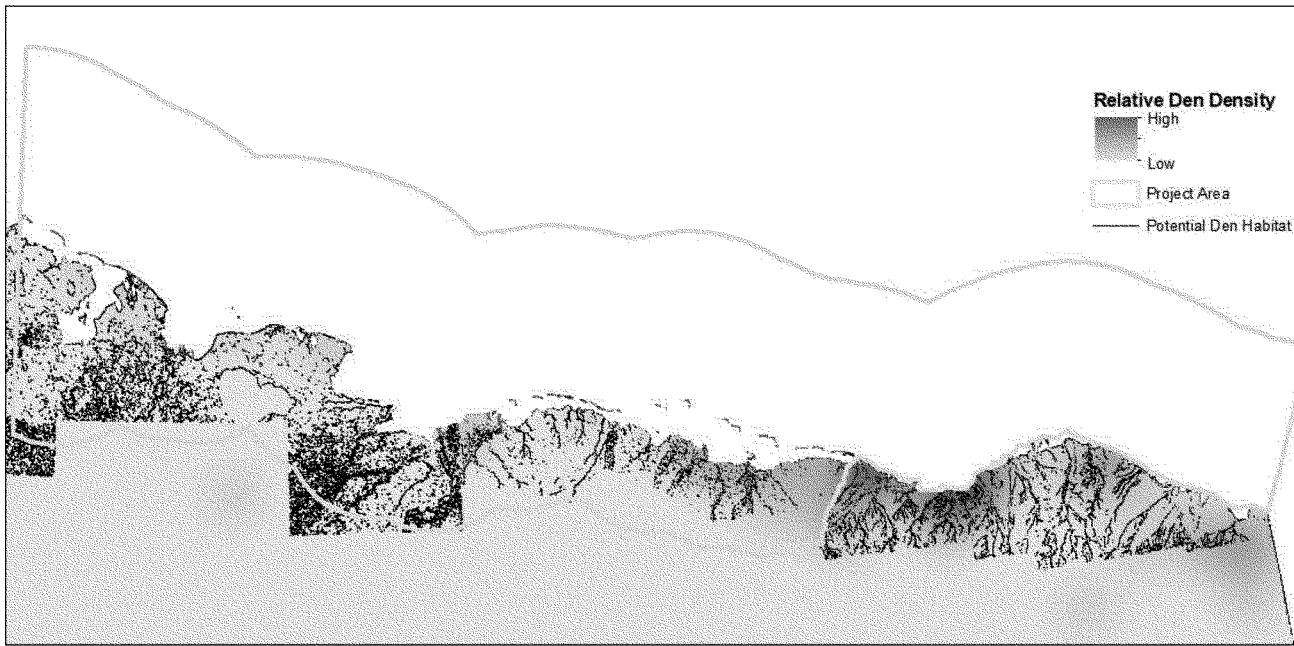


Figure 6—Depiction of the proposed project area with the underlying relative density of polar bear dens and potential polar bear den habitat as identified by Durner *et al.* (2006, 2013) and Blank (2013).

For each simulated den, we assigned dates of key denning events; den entrance, birth of cubs, when cubs reached 60 days of age, den emergence, and departure from the den site after emergence. These represent the chronology of each den under undisturbed conditions. We selected the entrance date for each den from a normal distribution parameterized by entrance dates of radio-collared bears in the Southern Beaufort subpopulation that denned on land included in Rode *et al.* (2018) and published in USGS (2018;  $n = 52$ , mean = 11 November, SD = 18 days). These data were restricted to those dens with both an entrance and emergence data identified and where a bear was in the den for greater than or equal to 60 days to reduce the chances of including non-maternal bears using shelter dens. Sixty days represents the minimum age of cubs before they have a chance of survival outside of the den. Thus, periods less than 60 days in the den have a higher chance of being shelter dens.

We truncated this distribution to ensure that all simulated dates occurred within the range of observed values (*i.e.*, 12 September to 22 December) identified in USGS (2018) to ensure that entrance dates were not simulated during biologically unreasonable periods given that the normal distribution allows some probability

(albeit small) of dates being substantially outside a biologically reasonable range. We selected a date of birth for each litter from a normal distribution with the mean set to ordinal date 348 (*i.e.*, 15 December) and standard deviation of 10, which allowed the 95 percent CI to approximate the range of birth dates (*i.e.*, December 1 to January 15) identified in the peer-reviewed literature (Messier *et al.* 1994, Van de Velde *et al.* 2003). We ensured that simulated birth dates occurred after simulated den entrance dates. We selected the emergence date as a random draw from an asymmetric Laplace distribution with parameters  $\mu = 81.0$ ,  $\sigma = 4.79$ , and  $p = 0.79$  estimated from the empirical emergence dates in Rode *et al.* (2018) and published in USGS (2018,  $n = 52$ ) of radio-collared bears in the Southern Beaufort Sea stock that denned on land using the mleALD function from package 'ald' (Galarzar and Lachos 2018) in program R (R Core Development Team 2021). We constrained simulated emergence dates to occur within the range of observed emergence dates (January 9 to April 9, again to constrain dates to be biologically realistic) and to not occur until after cubs were 60 days old. Finally, we assigned the number of days each family group spent at the den site post-emergence based on values reported in four behavioral studies,

Smith *et al.* (2007, 2010, 2013) and Robinson (2014), which monitored dens near immediately after emergence ( $n = 25$  dens). Specifically, we used the mean (8.0) and SD (5.5) of the dens monitored in these studies to parameterize a gamma distribution using the method of moments (Hobbs and Hooten 2015) with a shape parameter equal to  $8.0^2/5.5^2$  and a rate parameter equal to  $8.0/5.5^2$ ; we selected a post-emergence, pre-departure time for each den from this distribution. We restricted time at the den post emergence to occur within the range of times observed in Smith *et al.* (2007, 2010, 2013) and Robinson (2014) (*i.e.*, 2–23 days, again to ensure biologically realistic times spent at the den site were simulated). Additionally, we assigned each den a litter size by drawing the number of cubs from a multinomial distribution with probabilities derived from litter sizes ( $n = 25$  litters) reported in Smith *et al.* (2007, 2010, 2013) and Robinson (2014).

Because there is some probability that a female naturally emerges with 0 cubs, we also wanted to ensure this scenario was captured. It is difficult to parameterize the probability of litter size equal to 0 because it is rarely observed. We, therefore, assumed that dens in the USGS (2018) dataset that had denning durations less than the shortest den duration where a female

was later observed with cubs (*i.e.*, 79 days) had a litter size of 0. There were only 3 bears in the USGS (2018) data that met this criteria, leading to an assumed probability of a litter size of 0 at emergence being 0.07. We, therefore, assigned the probability of 0, 1, 2, or 3 cubs as 0.07, 0.15, 0.71, and 0.07, respectively.

#### Infrastructure and Human Activities

The model developed by Wilson and Durner (2020) provides a template for estimating the level of potential impact to denning polar bears of proposed activities while also considering the natural denning ecology of polar bears in the region. The approach developed by Wilson and Durner (2020) also allows for the incorporation of uncertainty in both the metric associated with denning bears and in the timing and spatial patterns of proposed activities when precise information on those activities is unavailable. Below we describe the different sources of potential disturbance we considered within the

model. We considered infrastructure and human activities only within the area of proposed activity in the ITR request. However, given that activity on the border of this region could still affect dens falling outside of the area defined in the ITR request, we also considered the impacts to denning bears within a 1-mile buffer outside of the proposed activity area.

#### Roads and Pads

We obtained shapefiles of existing and proposed road and pad infrastructure associated with industrial activities from AOGA. Each attribute in the shapefiles included a monthly occupancy rate that ranged from 0 to 1. For this analysis, we assumed that any road or pad with occupancy greater than 0 for a given month had the potential for human activity during the entire month unless otherwise noted.

#### Ice Roads and Tundra Travel

We obtained shapefiles of proposed ice road and tundra travel routes from AOGA. We also received information on

the proposed start and end dates for ice roads and tundra routes each winter from AOGA with activity anticipated to occur at least daily along each.

#### Seismic Surveys

Seismic surveys are planned to occur in the central region of the project area proposed by AOGA (Figure 7). The region where seismic surveys would occur were split into two different portions representing relatively high and relatively low probabilities of polar bear dens being present (Figure 7). During any given winter, no more than 766 km<sup>2</sup> and 1183 km<sup>2</sup> will be surveyed in the high- and low-density areas, respectively. Therefore, for this analysis, we estimated take rates by assuming that seismic surveys would occur in the portions of those areas with the highest underlying probabilities of denning occurring and covering the largest area proposed in each (*i.e.*, 766 km<sup>2</sup> and 1183 km<sup>2</sup>). All seismic surveys could start as early as January 1 and operate until April 15.

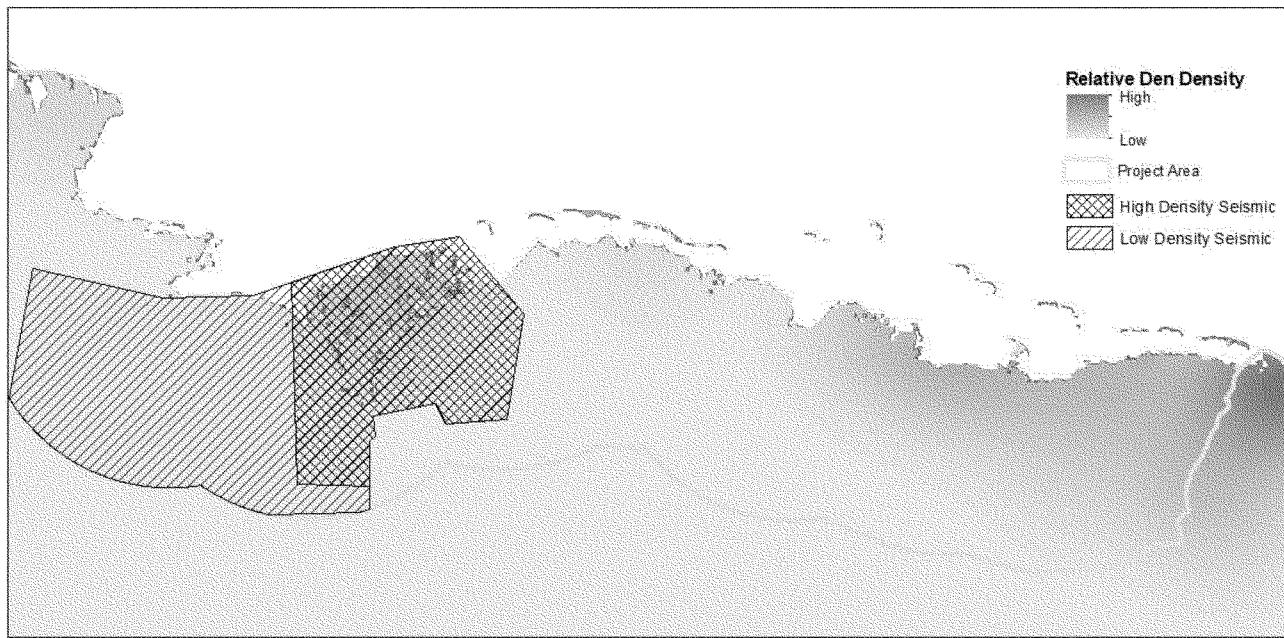


Figure 7—Depiction of areas where seismic surveys occurred in simulations with underlying map of relative den density. The high-density seismic area covers a region with relatively high probability of denning, and the low-density seismic area covers a region with relatively low probability of denning. During any given winter, no more than 766 km<sup>2</sup> and 1,183 km<sup>2</sup> will be surveyed in the high-density and low-density areas, respectively.

## Pipelines

We obtained shapefiles of existing and proposed pipelines, as well as which months and years each pipeline would be operational, from AOGA. Based on the description in the request, we assumed that all pipelines would have aerial surveys conducted weekly with aircraft flying at altitudes <457.2 m (<1,500 ft) and potentially exposing polar bears to disturbance.

## Other Aircraft Activities

Aside from flights to survey pipelines, the majority of aircraft flights are expected to occur at altitudes >457.2 m (>1,500 ft). After reviewing current and proposed flight patterns for flights likely to occur at altitudes <457.2 m (<1,500 ft), we found one flight path that we included in the model. The flight path is between the Ooogruk drill site and the onshore tie-in pad with at least daily flights between September 1 and January 31. We, therefore, also considered these flights as a continuous source of potential exposure to denning bears.

## Aerial Infrared Surveys

Based on AOGA's request, we assumed that all permanent infrastructure (*i.e.*, roads, pipelines, and pads), tundra travel routes, and ice roads would receive two aerial infrared (AIR) surveys of polar bear den habitat within 1 mile of those features each

winter. The first survey could occur between December 1 and 25 and the second between December 15 through January 10 with at least 24 hours between the completion of the first survey and the beginning of the second. During winters when seismic surveys occur, additional AIR surveys would be required. A total of three AIR surveys of any den habitat within 1 mile of the seismic survey area would be required prior to any seismic-related activities occurring (*e.g.*, advance crews checking ice conditions). The first AIR survey would need to occur between November 25 and December 15, the second between December 5 and 31, and the third between December 15 and January 15 with the same minimum of 24 hours between subsequent surveys. Similarly, during winters when seismic surveys occur, an additional AIR survey would be required of denning habitat within 1 mile of the pipeline between Badami and the road to Endicott Island. The additional survey of the pipeline (to create a total of three) would need to occur between December 5 and January 10.

During each iteration of the model, each AIR survey was randomly assigned a probability of detecting dens. Whereas previous analyses have used the results of Wilson and Durner (2020) to inform this detection probability, two additional studies (Smith *et al.* 2020, Woodruff *et al.* in prep.) have been

conducted since Wilson and Durner (2020) was published that require an updated approach. The study by Woodruff *et al.* (in prep.) considered the probability of detecting heat signatures from artificial polar bear dens. They did not find a relationship between den snow depth and detection and estimated a mean detection rate of 0.24. A recent study by Smith *et al.* (2020) estimated that the detection rate for actual polar bear dens in northern Alaska was 0.45 and also did not report any relationship between detection and den snow depth. Because the study by Wilson and Durner (2020) reported detection probability only for dens with less than 100 cm snow depth, we needed to correct it to also include those dens with greater than 100 cm snow depth. Based on the distribution of snow depths used by Wilson and Durner (2020) derived from data in Durner *et al.* (2003), we determined that 24 percent of dens have snow depths greater than 100 cm. After taking these into account, the overall detection probability from Wilson and Durner (2020) including dens with snow depths greater than 100 cm was estimated to be 0.54. This led to a mean detection of 0.41 and standard deviation of 0.15 across the three studies. We used these values, and the method of moments (Hobbs and Hooten 2015), to inform a Beta distribution

$$(\text{i.e., Beta} \left( \frac{0.41^2 - 0.41^3 - 0.41 \times 0.1539^2}{0.1539^2}, \frac{0.41 - 2 \times 0.41^2 + 0.41^3 - 0.1539^2 + 0.41 \times 0.1539^2}{0.1539^2} \right))$$

from which we drew a detection probability for each of the simulated AIR surveys during each iteration of the model.

## Model Implementation

For each iteration of the model, we first determined which dens were exposed to each of the simulated activities and infrastructure. We assumed that any den within 1.6 km (1 mi) of infrastructure or human activities was exposed and had the potential to be disturbed as numerous studies have suggested a 1.6-km buffer is sufficient to reduce disturbance to denning polar bears (MacGillivray *et al.* 2003, Larson *et al.* 2020, Owen *et al.* 2021). If, however, a den was detected by an AIR survey prior to activity occurring within 1.6 km of it, we assumed a 1.6-km buffer would be established to restrict activity adjacent to the den and there would be no potential for future disturbance. If a den was detected by an AIR survey after activity occurred within 1.6 km of it, as

long as the activity did not result in a Level A harassment or lethal take, we assumed a 1.6-km buffer would be applied to prevent disturbance during future denning periods. For dens exposed to human activity (*i.e.*, not detected by an AIR survey), we then identified the stage in the denning cycle when the exposure occurred based on the date range of the activities the den was exposed to. We then determined whether the exposure elicited a response by the denning bear based on probabilities derived from the reviewed case studies (Table 7). Level B harassment was applicable to both adults and cubs, if present, whereas Level A harassment (*i.e.*, serious injury and non-serious injury) and lethal take were applicable only to cubs because the proposed activities had a discountable risk of running over dens and thus killing a female or impacting her future reproductive potential. The majority of proposed activities occur on established, permanent infrastructure

that would not be suitable for denning and therefore, pose no risk of being run over (*i.e.*, an existing road). For those activities off permanent infrastructure (*i.e.*, ice roads and tundra travel routes), crews will constantly be on the lookout for signs of denning, use vehicle-based forward looking infrared cameras to scan for dens, and will largely avoid crossing topographic features suitable for denning given operational constraints. Thus, the risk of running over a den was deemed to have a probability so low that it was discountable.

Based on AOGA's description of their proposed activities, we only considered AIR surveys and pipeline inspection surveys as discrete exposures given that surveys occur quickly (*i.e.*, the time for an airplane to fly over) and infrequently.

For all other activities, we applied probabilities associated with repeated exposure (Table 7). For the pipeline surveys, we made one modification to the probabilities applied compared to those listed in Table 7. The case studies used to inform the post-emergence period include one where an individual fell into a den and caused the female to abandon her cubs. Given that pipeline surveys would either occur with a plane or a vehicle driving along an established path adjacent to a pipeline, there would be no chance of falling into a den. Therefore, we excluded this case study from the calculation of disturbance probabilities applied to our analysis, which led to a 0 percent probability of lethal take and a 100 percent probability of non-serious injury Level A harassment.

For dens exposed to human activity, we used a multinomial distribution with the probabilities of different levels of take for that period (Table 7). If a Level A harassment or lethal take was simulated to occur, a den was not allowed to be disturbed again during the subsequent denning periods because the outcome of that denning event was already determined. As noted above, Level A harassments and lethal takes only applied to cubs because proposed activities would not result in those levels of take for adult females. Adult females, however, could still receive Level B takes during the den establishment period or any time cubs

received Level B harassment, Level A harassment (*i.e.*, serious injury and non-serious injury), or lethal take.

We developed the code to run this model in program R (R Core Development Team 2021) and ran 10,000 iterations of the model (*i.e.*, Monte Carlo simulation) to derive the estimated number of animals disturbed and associated levels of take. We ran the model for each of the five winters covered by the ITR (*i.e.*, 2021/2022, 2022/2023, 2023/2024, 2024/2025, 2025/2026). For each winter's analysis, we analyzed the most impactful scenario that was possible. For example, seismic surveys may not occur every winter, but it is unclear which winters would have seismic surveys and which would not. Therefore, each of the scenarios were run with the inclusion of seismic surveys (and their additional AIR surveys) knowing that take rates will be less for a given winter if seismic surveys did not occur. Similarly, in some winters, winter travel between Deadhorse and Point Thomson will occur along an ice road running roughly parallel to the pipeline connecting the two locations. However, in other winters, the two locations will be connected via a tundra travel route farther south. Through preliminary analyses, we found that the tundra travel route led to higher annual take estimates. Therefore, for each of the scenarios, we only considered the tundra travel route knowing that take

rates will be less when the more northern ice road is used.

#### Model Results

On average, we estimated 52 (median = 51; 95% CI: 30–80) land-based dens in the area of proposed activity in AOGA's request within a 1.6-km (1-mi) buffer. Annual estimates for different levels of take are presented in Table 8. We also estimated that Level B harassment take from AIR surveys was never greater than a mean of 1.53 (median = 1; 95% CI: 0–5) during any winter. The distributions of both non-serious Level A and serious Level A/Lethal possible takes were non-normal and heavily skewed, as indicated by markedly different mean and median values. The heavily skewed nature of these distributions has led to a mean value that is not representative of the most common model result (*i.e.*, the median value), which for both non-serious Level A and serious Level A/Lethal takes is 0.0 takes. Due to the low (<0.29 for non-serious Level A and ≤0.426 for serious Level A/Lethal) probability of greater than or equal to 1 non-serious or serious injury Level A harassment/Lethal take each year of the proposed ITR period, combined with the median of 0.0 for each, we do not estimate the proposed activities will result in non-serious or serious injury Level A harassment or lethal take of polar bears.

**TABLE 8—RESULTS OF THE DEN DISTURBANCE MODEL FOR EACH WINTER OF PROPOSED ACTIVITY. ESTIMATES ARE PROVIDED FOR THE PROBABILITY (PROB), MEAN, MEDIAN (MED), AND 95% CONFIDENCE INTERVALS (CI) FOR LEVEL B, NON-SERIOUS LEVEL A, AND SERIOUS LEVEL A LETHAL TAKE. THE PROBABILITIES REPRESENT THE PROBABILITY OF ≥1 TAKE OF A BEAR OCCURRING DURING A GIVEN WINTER.**

Winter (20XX)	Level B harassment				Non serious Level A				Serious Level A lethal			
	Prob	Mean	Med	95 CI	Prob	Mean	Med	95 CI	Prob	Mean	Med	95 CI
21–22 .....	0.89	3.1	3.0	0–9	0.28	0.7	0.0	0–4	0.45	1.2	0.0	0–5
22–23 .....	0.90	3.2	3.0	0–9	0.29	0.7	0.0	0–4	0.46	1.2	0.0	0–6
23–24 .....	0.90	3.1	3.0	0–9	0.28	0.6	0.0	0–4	0.46	1.2	0.0	0–5
24–25 .....	0.90	3.1	3.0	0–9	0.28	0.6	0.0	0–4	0.46	1.2	0.0	0–6
25–26 .....	0.90	3.2	3.0	0–9	0.28	0.7	0.0	0–4	0.46	1.2	0.0	0–5

#### Maritime Activities

##### Vessel Traffic

Maritime activities were divided into two categories of potential impact: Vessel traffic and in-water construction. Vessel traffic was further divided into two categories: Repeated, frequent trips by small boats and hovercraft for crew movement and less frequent trips to move fuel and equipment by tugs and barges. We estimated the potential Level B harassment take from the repeated, frequent trips by crew boats and hovercraft in *Polar Bear: Surface*

*Interactions as marine roads using an occupancy rate of 0.2. This occupancy rate accounts for 20 percent of the impact area (*i.e.*, the length of the route buffered by 1.6 km (1 mi)) being impacted at any given point throughout the year, which is consistent with the daily trips described by AOGA.*

For less frequent trips for fuel and equipment resupply by tugs and barges, AOGA has supplied the highest expected number of trips that may be taken each year. Because we have been supplied with a finite number of potential trips, we used the impact area

of the barge/tug combination as it moves in its route from one location to the next. We estimated a 16.5-km<sup>2</sup> (6.37-mi<sup>2</sup>) take area for the barge, tug, and associated tow line, which accounts for a barge, tow, and tug length of 200 m (656 ft), width of 100 m (328 ft), and a 1.6-km (1-mi) buffer surrounding the vessels. We calculated the total hours of impact using an average vessel speed of two knots (3.7 km/hr), and then calculated the proportion of the open-water season that would be impacted (Table 9).

TABLE 9—CALCULATION OF THE TOTAL NUMBER OF BARGE AND TUG VESSEL TRIP HOURS AND THE PROPORTION OF THE SEASON POLAR BEARS MAY BE IMPACTED IN A 16.5-km<sup>2</sup> IMPACT AREA BY BARGE/TUG PRESENCE

Origin	Destination	Frequency	Est. length (km)	Time/trip (hr)	Total time (hr)
West Dock .....	Milne Point .....	1	38	10	10
Milne Point .....	West Dock .....	1	38	10	10
West Dock .....	Endicott .....	30	22	6	178
Endicott .....	Badami .....	10	42	11	114
Badami .....	Pt. Thomson .....	10	32	9	86
Pt. Thomson .....	West Dock .....	10	96	26	259
Total Hours .....	.....	.....	.....	.....	658
Proportion of Season Impacted by Barge/Tug Use.	.....	.....	.....	.....	0.24

The number of estimated takes was then calculated using Equation 4, in which the impact area is multiplied by encounter rate, proportion of season, and harassment rate for the open-water season. The final number of estimated Level B harassment events from barge/tug trips was 1.12 bears per year.

#### In-Water Construction

Polar bears are neither known to vocalize underwater nor to rely substantially upon underwater sounds to locate prey. However, for any predator, loss of hearing is likely to be an impediment to successful foraging. The Service has applied a 190 dB re 1 µPa threshold for Level B harassment arising from exposure of polar bears to underwater sounds for previous authorizations in the Beaufort and Chukchi Seas; seas. However, given the projection of polar bear TTS at 188 dB by Southall *et al.* (2019) referenced in Figure 1, we used a threshold of Level

B harassment at 180 dB re 1 µPa in our analysis for these proposed regulations.

The proposal for the 2021–2026 ITR period includes several activities that will create underwater sound, including dredging, screeding, pile driving, gravel placement, and geohazard surveys. Underwater sounds and the spatial extent to which they propagate are variable and dependent upon the sound source (e.g., size and composition of a pile for pile driving, equipment type for geophysical surveys, etc.), the installation method, substrate type, presence of sea ice, and water depth. Source levels range from less than 160 dB re 1 µPa to greater than 200 dB re 1 µPa (Rodkin and Pommerenck, 2014), meaning some sounds reach the level of TTS, however they do not reach the level of PTS (Table 1). Although these activities result in underwater areas that are above the 180 dB Level B harassment threshold for polar bears, the areas above the threshold will be

small and fall within the current impact area (1.6 km) used to estimate polar bear harassment due to surface interactions. Thus, additional harassment calculations based on in-water noise are not necessary. Similarly, any in-air sounds generated by underwater sources are not expected to propagate above the Level B harassment thresholds listed in Table 1 beyond the 1.6-km (1.0-mi) impact area established in *Polar Bear: Surface Interactions*.

#### Sum of Harassment From All Sources

A summary of total numbers of estimated take Level B harassments during the duration of the project by season and take category is provided in Table 10. The potential for lethal or Level A harassment was explored. The highest probability of greater than or equal to 1 lethal or serious Level A harassment take of polar bears over the 5-year ITR period was 0.462.

TABLE 10—TOTAL ESTIMATED LEVEL B HARASSMENT EVENTS OF POLAR BEARS PER YEAR AND SOURCE

Year	Level B harassment of polar bears on the surface or in water					Total
	Surface activity	Seismic exploration	Vessel activity	Aircraft overflights	Denning bears	
Open water 2021—Ice 2021/2022 .....	56.54	1.94	1.12	0.82	3.1	65
Open water 2022—Ice 2022/2023 .....	83.77	1.94	1.12	0.95	3.2	91
Open water 2023—Ice 2023/2024 .....	84.28	1.94	1.12	0.95	3.1	92
Open water 2024—Ice 2024/2025 .....	84.23	1.94	1.12	1.09	3.1	92
Open water 2025—Ice 2025/2026 .....	84.48	1.94	1.12	1.09	3.2	92
Open water 2026 .....	12	0.00	1.12	0.15	0	14

#### Critical Assumptions

To conduct this analysis and estimate the potential amount of Level B harassment, several critical assumptions were made.

Level B harassment is equated herein with behavioral responses that indicate harassment or disturbance. There is likely a portion of animals that respond in ways that indicate some level of disturbance but do not experience

significant biological consequences. Our estimates do not account for variable responses by polar bear age and sex; however, sensitivity of denning bears was incorporated into the analysis. The available information suggests that polar bears are generally resilient to low levels of disturbance. Females with dependent young and juvenile polar bears are physiologically the most sensitive (Andersen and Aars 2008) and most likely to experience harassment

from disturbance. There is not enough information on composition of the SBS polar bear stock in the proposed ITR area to incorporate individual variability based on age and sex or to predict its influence on harassment estimates. Our estimates are derived from a variety of sample populations with various age and sex structures, and we assume the exposed population will have a similar composition and

therefore, the response rates are applicable.

The estimates of behavioral response presented here do not account for the individual movements of animals away from the ITR area or habituation of animals to noise or human presence. Our assessment assumes animals remain stationary, (*i.e.*, density does not change). There is not enough information about the movement of polar bears in response to specific disturbances to refine this assumption. This situation could result in overestimation of harassment; however, we cannot account for harassment resulting from a polar bear moving into less preferred habitat due to disturbance.

#### Potential Effects of Oil Spills on Pacific Walruses and Polar Bears

Walrus and polar bear ranges overlap with many active and planned Industry activities—resulting in associated risks of oil spills from facilities, ships, and pipelines in both offshore and onshore habitat. To date, no major offshore oil spills have occurred in the Alaska Beaufort Sea. Although numerous small onshore spills have occurred on the North Slope. To date, there have been no documented effects to polar bears.

Oil spills are unintentional releases of oil or petroleum products. In accordance with the National Pollutant Discharge Elimination System Permit Program, all North Slope oil companies must submit an oil spill contingency plan. It is illegal to discharge oil into the environment, and a reporting system requires operators to report spills. Between 1977 and 1999, an average of 70 oil and 234 waste product spills occurred annually on the North Slope oilfields. Although most spills have been small by Industry standards (less than 50 bbl), larger spills (more than 500 bbl) accounted for much of the annual volume. In the North Slope, a total of seven large spills occurred between 1985 and 2009. The largest of these spills occurred in the spring of 2006 when approximately 6,190 bbl leaked from flow lines near an oil gathering center. More recently, several large spills have occurred. In 2012, 1,000 bbl of drilling mud and 100 bbl of crude were spilled in separate incidents; in 2013, approximately 166 bbl of crude oil was spilled; and in 2014, 177 bbl of drilling mud was spilled. In 2016, 160 bbl of mixed crude oil and produced water was spilled. These spills occurred primarily in the terrestrial environment in heavily industrialized areas not utilized by walruses or polar bears and therefore, posed little risk to the animals.

The two largest onshore oil spills were in the terrestrial environment and occurred because of pipeline failures. In the spring of 2006, approximately 6,190 bbl of crude oil spilled from a corroded pipeline operated by BP Exploration (Alaska). The spill impacted approximately 0.8 ha (~2 ac). In November 2009, a spill of approximately 1,150 bbl from a “common line” carrying oil, water, and natural gas operated by BP occurred as well, impacting approximately 780 m<sup>2</sup> (~8,400 ft<sup>2</sup>). None of these spills were known to impact polar bears, in part due to the locations and timing. Both sites were within or near Industry facilities not frequented by polar bears, and polar bears are not typically observed in the affected areas during the time of the spills and subsequent cleanup.

Nonetheless, walruses and polar bears could encounter spilled oil from exploratory operations, existing offshore facilities, pipelines, or from marine vessels. The shipping of crude oil, oil products, or other toxic substances, as well as the fuel for the shipping vessels, increases the risk of a spill.

As additional offshore Industry projects are planned, the potential for large spills in the marine environment increases. Oil spills in the sea-ice environment, at the ice edge, in leads, polynyas, and similar areas of importance to walruses and polar bears present an even greater challenge because of both the difficulties associated with cleaning oil in sea-ice along with the presence of wildlife in those areas.

Oiling of food sources, such as ringed seals, may result in indirect effects on polar bears, such as a local reduction in ringed seal numbers, or a change to the local distribution of seals and bears. More direct effects on polar bears could occur from: (1) Ingestion of oiled prey, potentially resulting in reduced survival of individual bears; (2) oiling of fur and subsequent ingestion of oil from grooming; (3) oiling and fouling of fur with subsequent loss of insulation, leading to hypothermia; and (4) disturbance, injury, or death from interactions with humans during oil spill response activities. Polar bears may be particularly vulnerable to disturbance when nutritionally stressed and during denning. Cleanup operations that disturb a den could result in death of cubs through abandonment, and perhaps, death of the female as well. In spring, females with cubs of the year that denned near or on land and migrate to contaminated offshore areas may encounter oil following a spill (Stirling in Geraci and St. Aubin 1990).

In the event of an oil spill, the Service follows oil spill response plans, coordinates with partners, and reduces the impact of a spill on wildlife. Several factors will be considered when responding to an oil spill—including spill location, magnitude, oil viscosity and thickness, accessibility to spill site, spill trajectory, time of year, weather conditions (*i.e.*, wind, temperature, precipitation), environmental conditions (*i.e.*, presence and thickness of ice), number, age, and sex of walruses and polar bears that are (or are likely to be) affected, degree of contact, importance of affected habitat, cleanup proposal, and likelihood of human-bear interactions. Response efforts will be conducted under a three-tier approach characterized as: (1) Primary response, involving containment, dispersion, burning, or cleanup of oil; (2) secondary response, involving hazing, herding, preventative capture/relocation, or additional methods to remove or deter wildlife from affected or potentially affected areas; and (3) tertiary response, involving capture, cleaning, treatment, and release of wildlife. If the decision is made to conduct response activities, primary and secondary response options will be vigorously applied. Tertiary response capability has been developed by the Service and partners, though such response efforts would most likely be able to handle only a few animals at a time. More information is available in the Service’s oil spill response plans for walruses and polar bears in Alaska, which is located at: [https://www.fws.gov/r7/fisheries/contaminants/pdf/Polar%20Bear%20WRP%20final%20v8\\_Public%20website.pdf](https://www.fws.gov/r7/fisheries/contaminants/pdf/Polar%20Bear%20WRP%20final%20v8_Public%20website.pdf).

BOEM has acknowledged that there are difficulties in effective oil-spill response in broken-ice conditions, and the National Academy of Sciences has determined that “no current cleanup methods remove more than a small fraction of oil spilled in marine waters, especially in the presence of broken ice.” BOEM advocates the use of non-mechanical methods of spill response, such as in-situ burning during periods when broken ice would hamper an effective mechanical response (MMS 2008). An in-situ burn has the potential to rapidly remove large quantities of oil and can be employed when broken-ice conditions may preclude mechanical response. However, the resulting smoke plume may contain toxic chemicals and high levels of particulates that can pose health risks to marine mammals, birds, and other wildlife as well as to humans. As a result, smoke trajectories must be considered before making the decision

to burn spilled oil. Another potential non-mechanical response strategy is the use of chemical dispersants to speed dissipation of oil from the water surface and disperse it within the water column in small droplets. However, dispersant use presents environmental trade-offs. While walruses and polar bears would likely benefit from reduced surface or shoreline oiling, dispersant use could have negative impacts on the aquatic food chain. Oil spill cleanup in the broken-ice and open-water conditions that characterize Arctic waters is problematic.

#### Evaluation of Effects of Oil Spills on Pacific Walruses and Polar Bears

The MMPA does not authorize the incidental take of marine mammals as the result of illegal actions, such as oil spills. Any event that results in an injurious or lethal outcome to a marine mammal is not authorized under this proposed ITR. However, for the purpose of determining whether Industry activity would have a negligible effect on walruses and polar bears, the Service evaluated the potential impacts of oil spills within the Beaufort Sea proposed ITR region.

##### *Pacific Walrus*

As stated earlier, the Beaufort Sea is not within the primary range for walruses. Therefore, the probability of walruses encountering oil or waste products as a result of a spill from Industry activities is low. Onshore oil spills would not impact walruses unless they occurred on or near beaches or oil moved into the offshore environment. However, in the event of a spill that occurs during the open-water season, oil in the water column could drift offshore and possibly encounter a small number of walruses. Oil spills from offshore platforms could also contact walruses under certain conditions. For example, spilled oil during the ice-covered season that isn't cleaned up could become part of the ice substrate and could eventually be released back into the environment during the following open-water season. Additionally, during spring melt, oil would be collected by spill response activities, but it could eventually contact a limited number of walruses.

Little is known about the effects of oil, specifically on walruses, as no studies have been conducted to date. Hypothetically, walruses may react to oil much like other pinnipeds. Walruses are not likely to ingest oil while grooming since walruses have very little hair and exhibit no grooming behavior. Adult walruses may not be severely affected by the oil spill through direct contact, but they will be extremely

sensitive to any habitat disturbance by human noise and response activities. In addition, due to the gregarious nature of walruses, an oil spill would most likely affect multiple individuals in the area. Walruses may also expose themselves more often to the oil that has accumulated at the edge of a contaminated shore or ice lead if they repeatedly enter and exit the water.

Walrus calves are most likely to suffer the ill-effects of oil contamination. Female walruses with calves are very attentive, and the calf will always stay close to its mother—including when the female is foraging for food. Walrus calves can swim almost immediately after birth and will often join their mother in the water. It is possible that an oiled calf will be unrecognizable to its mother either by sight or by smell and be abandoned. However, the greater threat may come from an oiled calf that is unable to swim away from the contamination and a devoted mother that would not leave without the calf, resulting in the potential mortality of both animals. Further, a nursing calf might ingest oil if the mother was oiled, also increasing the risk of injury or mortality.

Walruses have thick skin and blubber layers for insulation. Heat loss is regulated by control of peripheral blood flow through the animal's skin and blubber. The peripheral blood flow is decreased in cold water and increased at warmer temperatures. Direct exposure of walruses to oil is not believed to have any effect on the insulating capacity of their skin and blubber, although it is unknown if oil could affect their peripheral blood flow.

Damage to the skin of pinnipeds can occur from contact with oil because some of the oil penetrates the skin, causing inflammation and death of some tissue. The dead tissue is discarded, leaving behind an ulcer. While these skin lesions have only rarely been found on oiled seals, the effects on walruses may be greater because of a lack of hair to protect the skin. Direct exposure to oil can also result in conjunctivitis. Like other pinnipeds, walruses are susceptible to oil contamination in their eyes. Continuous exposure to oil will quickly cause permanent eye damage.

Inhalation of hydrocarbon fumes presents another threat to marine mammals. In studies conducted on pinnipeds, pulmonary hemorrhage, inflammation, congestion, and nerve damage resulted after exposure to concentrated hydrocarbon fumes for a period of 24 hours. If the walruses were also under stress from molting, pregnancy, etc., the increased heart rate associated with the stress would

circulate the hydrocarbons more quickly, lowering the tolerance threshold for ingestion or inhalation.

Walruses are benthic feeders, and much of the benthic prey contaminated by an oil spill would be killed immediately. Others that survived would become contaminated from oil in bottom sediments, possibly resulting in slower growth and a decrease in reproduction. Bivalve mollusks, a favorite prey species of the walrus, are not effective at processing hydrocarbon compounds, resulting in highly concentrated accumulations and long-term retention of the contamination within the organism. Specifically, bivalve mollusks bioconcentrate polycyclic aromatic hydrocarbons (PAHs). These compounds are a particularly toxic fraction of oil that may cause a variety of chronic toxic effects in exposed organisms, including enzyme induction, immune impairment, or cancer, among others. In addition, because walruses feed primarily on mollusks, they may be more vulnerable to a loss of this prey species than other pinnipeds that feed on a larger variety of prey. Furthermore, complete recovery of a bivalve mollusk population may take 10 years or more, forcing walruses to find other food resources or move to nontraditional areas.

The relatively few walruses in the Beaufort Sea and the low potential for a large oil spill (1,000 bbl or more), which is discussed in the following Risk Assessment Analysis, limit potential impacts to walruses to only certain events (*i.e.*, a large oil spill), which is further limited to only a handful of individuals. Fueling crews have personnel that are trained to handle operational spills and contain them. If a small offshore spill occurs, spill response vessels are stationed in close proximity and respond immediately.

##### *Polar Bear*

To date, large oil spills from Industry activities in the Beaufort Sea and coastal regions that would impact polar bears have not occurred, although the interest in and the development of offshore hydrocarbon reservoirs has increased the potential for large offshore oil spills. With limited background information available regarding oil spills in the Arctic environment, the outcome of such a spill is uncertain. For example, in the event of a large spill equal to a rupture in the Northstar pipeline and a complete drain of the subsea portion of the pipeline (approximately 5,900 bbl), oil would be influenced by seasonal weather and sea conditions including temperature, winds, wave action, and currents. Weather and sea conditions

also affect the type of equipment needed for spill response and the effectiveness of spill cleanup. Based on the experiences of cleanup efforts following the *Exxon Valdez* oil spill, where logistical support was readily available, spill response may be largely unsuccessful in open-water conditions. Indeed, spill response drills have been unsuccessful in the cleanup of oil in broken-ice conditions.

Small spills of oil or waste products throughout the year have the potential to impact some bears. The effects of fouling fur or ingesting oil or wastes, depending on the amount of oil or wastes involved, could be short term or result in death. For example, in April 1988, a dead polar bear was found on Leavitt Island, northeast of Oliktok Point. The cause of death was determined to be a mixture that included ethylene glycol and Rhodamine B dye (Amstrup *et al.* 1989). Again, in 2012, two dead polar bears that had been exposed to Rhodamine B were found on Narwhal Island, northwest of Endicott. While those bears' deaths were clearly human-caused, investigations were unable to identify a source for the chemicals. Rhodamine B is commonly used on the North Slope of Alaska by many people for many uses, including Industry. Without identified sources of contamination, those bear deaths cannot be attributed to Industry activity.

During the ice-covered season, mobile, non-denning bears would have a higher probability of encountering oil or other production wastes than non-mobile, denning females. Current management practices by Industry, such as requiring the proper use, storage, and disposal of hazardous materials, minimize the potential occurrence of such incidents. In the event of an oil spill, it is also likely that polar bears would be intentionally hazed to keep them away from the area, further reducing the likelihood of impacting the population.

In 1980, Oritsland *et al.* (1981) performed experiments in Canada that studied the effects of oil exposure on polar bears. Effects on experimentally oiled bears (where bears were forced to remain in oil for prolonged periods of time) included acute inflammation of the nasal passages, marked epidermal responses, anemia, anorexia, and biochemical changes indicative of stress, renal impairment, and death. Many effects did not become evident until several weeks after the experiment.

Oiling of the pelt causes significant thermoregulatory problems by reducing insulation value. Irritation or damage to the skin by oil may further contribute to

impaired thermoregulation. Experiments on live polar bears and pelts showed that the thermal value of the fur decreased significantly after oiling, and oiled bears showed increased metabolic rates and elevated skin temperature. Oiled bears are also likely to ingest oil as they groom to restore the insulation value of the oiled fur.

Oil ingestion by polar bears through consumption of contaminated prey, and by grooming or nursing, could have pathological effects depending on the amount of oil ingested and the individual's physiological state. Death could occur if a large amount of oil was ingested or if volatile components of oil were aspirated into the lungs. In the Canadian experiment (Oritsland *et al.* 1981), two of three bears died. A suspected contributing factor to their deaths was ingestion of oil. Experimentally oiled bears ingested large amounts of oil through grooming. Much of the oil was eliminated by vomiting and defecating; some was absorbed and later found in body fluids and tissues.

Ingestion of sublethal amounts of oil can have various physiological effects on polar bears, depending on whether the animal is able to excrete or detoxify the hydrocarbons. Petroleum hydrocarbons irritate or destroy epithelial cells lining the stomach and intestine, thereby affecting motility, digestion, and absorption.

Polar bears swimming in or walking adjacent to an oil spill could inhale toxic, volatile organic compounds from petroleum vapors. Vapor inhalation by polar bears could result in damage to the respiratory and central nervous systems depending on the amount of exposure.

Oil may also affect food sources of polar bears. Seals that die as a result of an oil spill could be scavenged by polar bears. This food source would increase exposure of the bears to hydrocarbons and could result in lethal impacts or reduced survival to individual bears. A local reduction in ringed seal numbers as a result of direct or indirect effects of oil could temporarily affect the local distribution of polar bears. A reduction in density of seals as a direct result of mortality from contact with spilled oil could result in polar bears not using a particular area for hunting. Further, possible impacts from the loss of a food source could reduce recruitment and/or survival.

Spilled oil can concentrate and accumulate in leads and openings that occur during spring break-up and autumn freeze-up periods. Such a concentration of spilled oil would

increase the likelihood that polar bears and their principal prey would be oiled. To access ringed and bearded seals, polar bears in the SBS concentrate in shallow waters less than 300 m (984 ft) deep over the continental shelf and in areas with greater than 50 percent ice cover (Durner *et al.* 2004).

Due to their seasonal use of nearshore habitat, the times of greatest impact from an oil spill to polar bears are likely the open-water and broken-ice periods (summer and fall), extending into the ice-covered season (Wilson *et al.* 2018). This scenario is important because distributions of polar bears are not uniform through time. Nearshore and offshore polar bear densities are greatest in fall, and polar bear use of coastal areas during the fall open-water period has increased in recent years in the Beaufort Sea. An analysis of data collected from the period 2001–2005 during the fall open-water period concluded: (1) On average approximately 4 percent of the estimated polar bears in the Southern Beaufort Sea stock were observed onshore in the fall; (2) 80 percent of bears onshore occurred within 15 km (9 mi) of subsistence-harvested bowhead whale carcasses, where large congregations of polar bears have been observed feeding; and (3) sea-ice conditions affected the number of bears on land and the duration of time they spent there (Schliebe *et al.* 2006). Hence, bears concentrated in areas where beach-cast marine mammal carcasses occur during the fall would likely be more susceptible to oiling.

Wilson *et al.* (2018) analyzed the potential effects of a "worst case discharge" (WCD) on polar bears in the Chukchi Sea. Their WCD scenario was based on an Industry oil spill response plan for offshore development in the region and represented underwater blowouts releasing 25,000 bbls of crude oil per day for 30 days beginning in October. The results of this analysis suggested that between 5 and 40 percent of a stock of 2,000 polar bears in the Chukchi Sea could be exposed to oil if a WCD occurred. A similar analysis has not been conducted for the Beaufort Sea; however, given the extremely low probability (*i.e.*, 0.0001) that an unmitigated WCD event would occur (BOEM 2016, Wilson *et al.* 2017), the likelihood of such effects on polar bears in the Beaufort Sea is extremely low.

The persistence of toxic subsurface oil and chronic exposures, even at sublethal levels, can have long-term effects on wildlife (Peterson *et al.* 2003). Exposure to PAHs can have chronic effects because some effects are sublethal (*e.g.*, enzyme induction or

immune impairment) or delayed (e.g., cancer). Although it is true that some bears may be directly affected by spilled oil initially, the long-term impact could be much greater. Long-term effects could be substantial through complex environmental interactions—compromising the health of exposed animals. For example, PAHs can impact the food web by concentrating in filter-feeding organisms, thus affecting fish that feed on those organisms, and the predators of those fish, such as the ringed seals that polar bears prey upon. How these complex interactions would affect polar bears is not well understood, but sublethal, chronic effects of an oil spill may affect the polar bear population due to reduced fitness of surviving animals.

Polar bears are biological sinks for some pollutants, such as polychlorinated biphenyls or organochlorine pesticides, because polar bears are an apex predator of the Arctic ecosystem and are also opportunistic scavengers of other marine mammals. Additionally, their diet is composed mostly of high-fat sealskin and blubber (Norstrom *et al.* 1988). The highest concentrations of persistent organic pollutants in Arctic marine mammals have been found in seal-eating walruses and polar bears near Svalbard (Norstrom *et al.* 1988, Andersen *et al.* 2001, Muir *et al.* 1999). As such, polar bears would be susceptible to the effects of bioaccumulation of contaminants, which could affect their reproduction, survival, and immune systems.

In addition, subadult polar bears are more vulnerable than adults to environmental effects (Taylor *et al.* 1987). Therefore, subadults would be most prone to the lethal and sublethal effects of an oil spill due to their proclivity for scavenging (thus increasing their exposure to oiled marine mammals) and their inexperience in hunting. Due to the greater maternal investment a weaned subadult represents, reduced survival rates of subadult polar bears have a greater impact on population growth rate and sustainable harvest than reduced litter production rates (Taylor *et al.* 1987).

Evaluation of the potential impacts of spilled Industry waste products and oil suggest that individual bears could be adversely impacted by exposure to these substances (Oritsland *et al.* 1981). The major concern regarding a large oil spill is the impact such a spill would have on the rates of recruitment and survival of the SBS polar bear stock. Polar bear deaths from an oil spill could be caused by direct exposure to the oil. However, indirect effects, such as a reduction of

prey or scavenging contaminated carcasses, could also cause health effects, death, or otherwise affect rates of recruitment and survival. Depending on the type and amount of oil or wastes involved and the timing and location of a spill, impacts could be acute, chronic, temporary, or lethal. For the rates of polar bear reproduction, recruitment, or survival to be impacted, a large-volume oil spill would have to take place. The following section analyzes the likelihood and potential effects of such a large-volume oil spill.

#### **Risk Assessment of Potential Effects Upon Polar Bears From a Large Oil Spill in the Beaufort Sea**

In this section, we qualitatively assess the likelihood that polar bear populations on the North Slope may be affected by large oil spills. We considered: (1) The probability of a large oil spill occurring in the Beaufort Sea; (2) the probability of that oil spill impacting coastal polar bear habitat; (3) the probability of polar bears being in the area and coming into contact with that large oil spill; and (4) the number of polar bears that could potentially be impacted by the spill. Although most of the information in this evaluation is qualitative, the probability of all factors occurring sequentially in a manner that impacts polar bears in the Beaufort Sea is low. Since walruses are not often found in the Beaufort Sea, and there is little information available regarding the potential effects of an oil spill upon walruses, this analysis emphasizes polar bears.

The analysis was based on polar bear distribution and habitat use using four sources of information that, when combined, allowed the Service to make conclusions on the risk of oil spills to polar bears. This information included: (1) The description of existing offshore oil and gas production facilities previously discussed in the Description of Activities section; (2) polar bear distribution information previously discussed in the Biological Information section; (3) BOEM Oil-Spill Risk Analysis (OSRA) for the OCS (Li and Smith 2020), including polar bear environmental resource areas (ERAs) and land segments (LSs); and (4) the most recent polar bear risk assessment from the previous ITRs.

Development of offshore production facilities with supporting pipelines increases the potential for large offshore spills. The probability of a large oil spill from offshore oil and gas facilities and the risk to polar bears is a scenario that has been considered in previous regulations (71 FR 43926, August 2, 2006; 76 FR 47010, August 3, 2011; 81

FR 52275, August 5, 2016). Although there is a slowly growing body of scientific literature (e.g., Amstrup *et al.* 2006, Wilson *et al.* 2017), the background information available regarding the effects of large oil spills on polar bears in the marine arctic environment is still limited, and thus the impact of a large oil spill is uncertain. As far as is known, polar bears have not been affected by oil spilled as a result of North Slope Industry activities.

The oil-spill scenarios for this analysis include the potential impacts of a large oil spill (*i.e.*, 1,000 bbl or more) from one of the offshore Industry facilities: Northstar, Spy Island, Ooguruk, Endicott, or the future Liberty. Estimating a large oil-spill occurrence is accomplished by examining a variety of factors and associated uncertainty, including location, number, and size of a large oil spill and the wind, ice, and current conditions at the time of a spill.

#### **BOEM Oil Spill Risk Analysis**

Because the BOEM OSRA provides the most current and rigorous treatment of potential oil spills in the Beaufort Sea Planning Area, our analysis of potential oil spill impacts applied the results of BOEM's OSRA (Li and Smith 2020) to help analyze potential impacts of a large oil spill originating in the Beaufort Sea ITR region to polar bears. The OSRA quantitatively assesses how and where large offshore spills will likely move by modeling effects of the physical environment, including wind, sea-ice, and currents, on spilled oil. (Smith *et al.* 1982, Amstrup *et al.* 2006a).

The OSRA estimated that the mean number of large spills is less than one over the 20-year life of past, present, and reasonably foreseeable developments in the Beaufort Sea Planning Area. In addition, large spills are more likely to occur during development and production than during exploration in the Arctic (MMS 2008). Our oil spill assessment during a proposed 5-year regulatory period is predicated on the same assumptions.

#### **Trajectory Estimates of Large Offshore Oil Spills**

Although it is reasonable to conclude that the chance of one or more large spills occurring during the period of these proposed regulations on the Alaskan OCS from production activities is low, for analysis purposes, we assume that a large spill does occur in order to evaluate potential impacts to polar bears. The BOEM OSRA modeled the trajectories of 3,240 oil spills from 581 possible launch points in relation to the

shoreline and biological, physical, and sociocultural resource areas specific to the Beaufort Sea. The chance that a large oil spill will contact a specific ERA of concern within a given time of travel from a certain location (launch area or pipeline segment) is termed a “conditional probability.” Conditional probabilities assume that no cleanup activities take place and there are no efforts to contain the spill.

We used two BOEM launch areas (LAs), LA 2 and LA 3, and one pipeline segment (PL), PL 2, from Appendix A of the OSRA (Figure A2; Li and Smith 2020) to represent the oil spills moving from hypothetical offshore areas. These LAs and PLs were selected because of their proximity to current and proposed offshore facilities.

#### Oil-Spill-Trajectory Model Assumptions

For purposes of its oil spill trajectory simulation, BOEM made the following assumptions: All spills occur instantaneously; large oil spills occur in the hypothetical origin areas or along the hypothetical PLs noted above; large spills do not weather (*i.e.*, become degraded by weather conditions) for purposes of trajectory analysis; weathering is calculated separately; the model does not simulate cleanup scenarios; the oil spill trajectories move as though no oil spill response action is taken; and large oil spills stop when they contact the mainland coastline.

#### Analysis of the Conditional Probability Results

As noted above, the chance that a large oil spill will contact a specific ERA of concern within a given time of travel from a certain location (LA or PL), assuming a large spill occurs and that no cleanup takes place, is termed a “conditional probability.” From the OSRA, Appendix B, we chose ERAs and land segments (LSSs) to represent areas of concern pertinent to polar bears (MMS 2008a). Those ERAs and LSSs and the conditional probabilities that a large oil spill originating from the selected LAs or PLs could affect those ERAs and LSSs are presented in a supplementary table titled “Conditional Oil Spill Probabilities” that can be found on <http://www.regulations.gov> under Docket No. FWS-R7-ES-2021-0037. From the information this table, we note the highest chance of contact and the range of chances of contact that could occur should a large spill occur from LAs or PLs.

Polar bears are vulnerable to a large oil spill during the open-water period when bears form aggregations onshore. In the Beaufort Sea, these aggregations often form in the fall near subsistence-

harvested bowhead whale carcasses. Specific aggregation areas include Point Utqigvik, Cross Island, and Kaktovik. In recent years, more than 60 polar bears have been observed feeding on whale carcasses just outside of Kaktovik, and in the autumn of 2002, North Slope Borough and Service biologists documented more than 100 polar bears in and around Utqigvik. In order for significant impacts to polar bears to occur, (1) a large oil spill would have to occur, (2) oil would have to contact an area where polar bears aggregate, and (3) the aggregation of polar bears would have to occur at the same time as the spill. The risk of all three of these events occurring simultaneously is low.

We identified polar bear aggregations in environmental resource areas and non-grouped land segments (ERA 55, 93, 95, 96, 100; LS 85, 102, 107). The OSRA estimates the chance of contacting these aggregations is 18 percent or less (Table 11). The OSRA estimates for LA 2 and LA 3 have the highest chance of a large spill contacting ERA 96 in summer (Midway, Cross, and Bartlett islands). Some polar bears will aggregate at these islands during August–October (3-month period). If a large oil spill occurred and contacted those aggregation sites outside of the timeframe of use by polar bears, potential impacts to polar bears would be reduced.

Coastal areas provide important denning habitat for polar bears, such as the ANWR and nearshore barrier islands (containing tundra habitat) (Amstrup 1993, Amstrup and Gardner 1994, Durner *et al.* 2006, USFWS unpubl. data). Considering that 65 percent of confirmed terrestrial dens found in Alaska in the period 1981–2005 were on coastal or island bluffs (Durner *et al.* 2006), oiling of such habitats could have negative effects on polar bears, although the specific nature and ramifications of such effects are unknown.

Assuming a large oil spill occurs, tundra relief barrier islands (ERA 92, 93, and 94, LS 97 and 102) have up to an 18 percent chance of a large spill contacting them from PL 2 (Table 11). The OSRA estimates suggest that there is a 12 percent chance that oil would contact the coastline of the ANWR (GLS 166). The Kaktovik area (ERA 95 and 100, LS 107) has up to a one percent chance of a spill contacting the coastline. The chance of a spill contacting the coast near Utqiagvik (ERA 55, LS 85) would be as high as 15 percent (Table 11).

All barrier islands are important resting and travel corridors for polar bears, and larger barrier islands that contain tundra relief are also important

denning habitat. Tundra-bearing barrier islands within the geographic region and near oilfield development are the Jones Island group of Pingok, Bertoncini, Bodfish, Cottle, Howe, Foggy, Tigvariak, and Flaxman Islands. In addition, Cross Island has gravel relief where polar bears have denned. The Jones Island group is located in ERA 92 and LS 97. If a spill were to originate from an LA 2 pipeline segment during the summer months, the probability that this spill would contact these land segments could be as great as 15 percent. The probability that a spill from LA 3 would contact the Jones Island group would range from 1 percent to as high as 12 percent. Likewise, for PL 2, the range would be from 3 percent to as high as 12 percent.

#### Risk Assessment From Prior ITRs

In previous ITRs, we used a risk assessment method that considered oil spill probability estimates for two sites (Northstar and Liberty), oil spill trajectory models, and a polar bear distribution model based on location of satellite-collared females during September and October (68 FR 66744, November 28, 2003; 71 FR 43926, August 2, 2006; 76 FR 47010, August 3, 2011; and 81 FR 52275, August 5, 2016). To support the analysis for this action, we reviewed the previous analysis and used the data to compare the potential effects of a large oil spill in a nearshore production facility (less than 5 mi), such as Liberty, and a facility located further offshore, such as Northstar. Even though the risk assessment of 2006 did not specifically model spills from the Ooguruk or Nikaitchuq sites, we believe it was reasonable to assume that the analysis for Liberty and indirectly, Northstar, adequately reflected the potential impacts likely to occur from an oil spill at either of these additional locations due to the similarity in the nearshore locations.

#### Methodology of Prior Risk Assessment

The first step of the risk assessment analysis was to examine oil spill probabilities at offshore production sites for the summer (July–October) and winter (November–June) seasons based on information developed for the original Northstar and Liberty EISs. We assumed that one large spill occurred during the 5-year period covered by the regulations. A detailed description of the methodology can be found at 71 FR 43926 (August 2, 2006). The second step in the risk assessment was to estimate the number of polar bears that could be impacted by a large spill. All modeled polar bear grid cell locations that were intersected by one or more cells of a

rasterized spill path (a modeled group of hundreds of oil particles forming a trajectory and pushed by winds and currents and impeded by ice) were considered “oiled” by a spill. For purposes of the analysis, if a bear contacted oil, the contact was assumed to be lethal. This analysis involved estimating the distribution of bears that could be in the area and overlapping polar bear distributions and seasonal aggregations with oil spill trajectories. The trajectories previously calculated for Northstar and Liberty sites were used. The trajectories for Northstar and Liberty were provided by the BOEM and were reported in Amstrup *et al.* (2006a). BOEM estimated probable sizes of oil spills from a pinhole leak to a rupture in the transportation pipeline. These spill sizes ranged from a minimum of 125 to a catastrophic release event of 5,912 bbl. Researchers set the size of the modeled spill at the scenario of 5,912 bbl caused by a pinhole or small leak for 60 days under ice without detection.

The second step of the risk assessment analysis incorporated polar bear densities overlapped with the oil spill trajectories. To accomplish this, in 2004, USGS completed an analysis investigating the potential effects of hypothetical oil spills on polar bears. Movement and distribution information were derived from radio and satellite locations of collared adult females. Density estimates were used to determine the distribution of polar bears in the Beaufort Sea. Researchers then created a grid system centered over the Northstar production island and the Liberty site to estimate the number of bears expected to occur within each 1-km<sup>2</sup> grid cell. Each of the simulated oil spills were overlaid with the polar bear distribution grid. Finally, the likelihood of occurrence of bears oiled during the duration of the proposed 5-year ITRs was estimated. This likelihood was calculated by multiplying the number of polar bears oiled by the spill by the percentage of time bears were at risk for each period of the year.

In summary, the maximum numbers of bears potentially oiled by a 5,912-bbl spill during the September open-water season from Northstar was 27, and the maximum from Liberty was 23, assuming a large oil spill occurred and no cleanup or mitigation measures took place. Potentially oiled polar bears ranged up to 74 bears with up to 55 bears during October in mixed-ice conditions for Northstar and Liberty, respectively. Median number of bears oiled by the 5,912-bbl spill from the Northstar simulation site in September and October were 3 and 11 bears, respectively. Median numbers of bears

oiled from the Liberty simulation site for September and October were 1 and 3 bears, respectively. Variation occurred among oil spill scenarios, resulting from differences in oil spill trajectories among those scenarios and not the result of variation in the estimated bear densities. For example, in October, 75 percent of trajectories from the 5,912-bbl spill affected 20 or fewer polar bears from spills originating at the Northstar simulation site and 9 or fewer bears from spills originating at the Liberty simulation site.

When calculating the probability that a 5,912-bbl spill would oil five or more bears during the annual fall period, we found that oil spills and trajectories were more likely to affect fewer than five bears versus more than five bears. Thus, for Northstar, the chance that a 5,912-bbl oil spill affected (resulting in mortality) 5 or more bears was 1.0–3.4 percent; 10 or more bears was 0.7–2.3 percent; and 20 or more bears was 0.2–0.8 percent. For Liberty, the probability of a spill that would affect 5 or more bears was 0.3–7.4 percent; 10 or more bears, 0.1–0.4 percent; and 20 or more bears, 0.1–0.2 percent.

#### Discussion of Prior Risk Assessment

Based on the simulations, a nearshore island production site (less than 5 mi from shore) would potentially involve less risk of polar bears being oiled than a facility located farther offshore (greater than 5 mi). For any spill event, seasonality of habitat use by bears will be an important variable in assessing risk to polar bears. During the fall season when a portion of the SBS bear stock aggregate on terrestrial sites and use barrier islands for travel corridors, spill events from nearshore industrial facilities may pose more chance of exposing bears to oil due to its persistence in the nearshore environment. Conversely, during the ice-covered and summer seasons, Industry facilities located farther offshore (greater than 5 mi) may increase the chance of bears being exposed to oil as bears will be associated with the ice habitat.

#### Conclusion of Risk Assessment

To date, documented oil spill-related impacts in the marine environment to polar bears in the Beaufort Sea by the oil and gas Industry are minimal. No large spills by Industry in the marine environment have occurred in Arctic Alaska. Nevertheless, the possibility of oil spills from Industry activities and the subsequent impacts on polar bears that contact oil remain a major concern.

There has been much discussion about effective techniques for

containing, recovering, and cleaning up oil spills in Arctic marine environments, particularly the concern that effective oil spill cleanup during poor weather and broken-ice conditions has not been proven. Given this uncertainty, limiting the likelihood of a large oil spill becomes an even more important consideration. Industry oil spill contingency plans describe methodologies put in place to prevent a spill from occurring. For example, all current offshore production facilities have spill containment systems in place at the well heads. In the event an oil discharge should occur, containment systems are designed to collect the oil before it makes contact with the environment.

With the limited background information available regarding oil spills in the Arctic environment, it is unknown what the outcome of such a spill event would be if one were to occur. For example, polar bears could encounter oil spills during the open-water and ice-covered seasons in offshore or onshore habitat. Although most polar bears in the SBS stock spend a large amount of their time offshore on the pack ice, it is likely that some bears would encounter oil from a large spill that persisted for 30 days or more.

An analysis of the potential effects of a “worst case discharge” (WCD) on polar bears in the Chukchi Sea suggested that between 5 and 40 percent of a stock of 2,000 polar bears could be exposed to oil if a WCD occurred (Wilson *et al.* 2017). A similar analysis has not been conducted for the Beaufort Sea; however, given the extremely low probability (*i.e.*, 0.0001) that an unmitigated WCD event would occur (BOEM 2015, Wilson *et al.* 2017), the likelihood of such effects on polar bears in the Beaufort Sea is extremely low.

Although the extent of impacts from a large oil spill would depend on the size, location, and timing of spills relative to polar bear distributions along with the effectiveness of spill response and cleanup efforts, under some scenarios, stock-level impacts could be expected. A large spill originating from a marine oil platform could have significant impacts on polar bears if an oil spill contacted an aggregation of polar bears. Likewise, a spill occurring during the broken-ice period could significantly impact the SBS polar bear stock in part because polar bears may be more active during this season.

If an offshore oil spill contaminated numerous bears, a potentially significant impact to the SBS stock could result. This effect would be magnified in and around areas of polar bear aggregations. Bears could also be

affected indirectly either by food contamination or by chronic lasting effects caused by exposure to oil. During the 5-year period of these proposed regulations, however, the chance of a large spill occurring is low.

While there is uncertainty in the analysis, certain factors must align for polar bears to be impacted by a large oil spill occurring in the marine environment. First, a large spill must occur. Second, the large spill must contaminate areas where bears may be located. Third, polar bears must be seasonally distributed within the affected region when the oil is present. Assuming a large spill occurs, BOEM's OSRA estimated that there is up to a 6 percent chance that a large spill from the analyzed sites would contact Cross Island (ERA 96) within 360 days, as much as a 12 percent chance that it would contact Barter Island and/or the coast of the ANWR (ERA 95 and 100, LS 107, and GLS 166), and up to a 15 percent chance that an oil spill would contact the coast near Utqigvik (ERA 55, LS 85) during the summer time period. Data from polar bear coastal surveys indicate that polar bears are unevenly and seasonally distributed along the coastal areas of the Beaufort Sea ITR region. Seasonally, only a portion of the SBS stock utilizes the coastline between the Alaska-Canada border and Utqiagvik and only a portion of those bears could be in the oil-spill-affected region.

As a result of the information considered here, the Service concludes that the likelihood of an offshore spill from an offshore production facility in the next 5 years is low. Moreover, in the unlikely event of a large spill, the likelihood that spills would contaminate areas occupied by large numbers of bears is low. While individual bears could be negatively affected by a spill, the potential for a stock-level effect is low unless the spill contacted an area where large numbers of polar bears were gathered. Known polar bear aggregations tend to be seasonal during the fall, further minimizing the potential of a spill to impact the stock. Therefore, we conclude that the likelihood of a large spill occurring is low, but if a large spill does occur, the likelihood that it would contaminate areas occupied by large numbers of polar bears is also low. If a large spill does occur, we conclude that only small numbers of polar bears are likely to be affected, though some bears may be killed, and there would be only a negligible impact to the SBS stock.

## Take Estimates for Pacific Walruses and Polar Bears

### *Small Numbers Determinations and Findings*

The following analysis concludes that only small numbers of walruses and polar bears are likely to be subjected to take incidental to the described Industry activities relative to their respective stocks. For our small numbers determination, we consider whether the estimated number of marine mammals to be subjected to incidental take is small relative to the population size of the species or stock.

1. The estimated number of walruses and polar bears that will be harassed by Industry activity is small relative to the number of animals in their stocks.

As stated previously, walruses are extralimital in the Beaufort Sea with nearly the entire walrus population found in the Chukchi and Bering Seas. Industry monitoring reports have observed no more than 38 walruses between 1995 and 2015, with only a few observed instances of disturbance to those walruses (AES Alaska 2015, USFWS unpublished data). Between those years, Industry walrus observations in the Beaufort Sea ITR region averaged approximately two walruses per year, although the actual observations were of a single or two animals, often separated by several years. At most, only a tiny fraction of the Pacific walrus population—which is comprised of hundreds of thousands of animals—may be found in areas potentially affected by AOGA's specified activities. We do not anticipate that seasonal movements of a few walruses into the Beaufort Sea will significantly increase over the 5-year period of this proposed ITR. The estimated take of 15 Pacific walruses per year from a population numbering approximately 283,213 animals represents 0.005 percent of that population. We therefore find that the Industry activities specified in AOGA's Request would result in only a small number of incidental harassments of walruses.

The Beaufort Sea ITR region is completely within the range of the SBS stock of polar bears, and during some portions of the year polar bears can be frequently encountered by Industry. From 2014 through 2018, Industry made 1,166 reports of polar bears comprising 1,698 bears. However, when we evaluated the effects upon the 1,698 bears observed, we found that 84 percent (1,434) did not result in take. Over those 5 years, Level B harassments of polar bears totaled 264, approximately 15.5 percent of the

observed bears. No other forms of take or harassment were observed. Annually an average of 340 polar bears were observed during Industry activities. The number of Level B harassment events has averaged 53 per year from 2014 to 2018. We conclude that over the 5-year period of this proposed ITR, Industry activities will result in a similarly small number of incidental harassments of polar bears, and that those events will be similarly limited to Level B harassment.

Based on this information, we estimate that there will be no more than 443 Level B harassment takes of polar bears during the 5-year period of this proposed ITR, with no more than 92 occurring within a single year. Take of 92 animals is 10.14 percent of the best available estimate of the current stock size of 907 animals in the Southern Beaufort Sea stock (Bromaghin *et al.* 2015, Atwood *et al.* 2020)  $((92 \div 907) \times 100 \approx 10.14)$ , and represents a "small number" of polar bears of that stock. The incidental Level B harassment of no more than 92 polar bears each year is unlikely to lead to significant consequences for the health, reproduction, or survival of affected animals. All takes are anticipated to be incidental Level B harassment involving short-term and temporary changes in bear behavior. The required mitigation and monitoring measures described in the proposed regulations are expected to prevent any lethal or injurious takes.

2. Within the specified geographical region, the area of Industry activity is expected to be small relative to the range of walruses and polar bears.

Walruses and polar bears range well beyond the boundaries of the proposed Beaufort Sea ITR region. As such, the ITR region itself represents only a subset of the potential area in which these species may occur. Further, only seven percent of the ITR area (518,800 ha of 7.9 million ha) is estimated to be impacted by the proposed Industry activities, even accounting for a disturbance zone surrounding industrial facility and transit routes. Thus, the Service concludes that the area of Industry activity will be relatively small compared to the range of walruses and polar bears.

## Conclusion

We expect that only small numbers of Pacific walruses and SBS polar bears stocks would be taken by the Industry activities specified in AOGA's Request because: (1) Only a small proportion of the walrus or polar bear stocks will occur in the areas where Industry activities will occur; and (2) only small numbers will be impacted because

walruses are extralimital in the Beaufort Sea and SBS polar bears are widely distributed throughout their expansive range, which encompasses areas beyond the Beaufort Sea ITR region.

#### *Negligible Impacts Determination and Finding*

Based on the best scientific information available, the results of Industry monitoring data from the previous ITRs, the review of the information generated by the listing of the polar bear as a threatened species and the designation of polar bear critical habitat, the results of our modeling assessments, and the status of the stocks, we find that any incidental take reasonably likely to result from the effects of Industry activities during the period of the proposed ITRs, in the specified geographic region will have no more than a negligible impact on walruses and polar bears. We do not expect that the total of these disturbances will affect rates of recruitment or survival for walruses or polar bears. Factors considered in our negligible impacts determination include:

1. The behavior and distribution of walruses and polar bears in areas that overlap with Industry activities are expected to limit interactions of walruses and polar bears with those activities.

The distribution and habitat use patterns of walruses and polar bears indicate that relatively few animals will occur in the proposed areas of Industry activity at any particular time, and therefore, few animals are likely to be affected. As discussed previously, only small numbers of walruses are likely to be found in the Beaufort Sea where and when offshore Industry activities are proposed. Likewise, SBS polar bears are widely distributed across a range that much greater than the geographic scope of the proposed ITRs, are most often closely associated with pack ice, and are unlikely to interact with the open water industrial activities specified in AOGA's Request, much less the majority of activities that would occur onshore.

2. The predicted effects of Industry activities on walruses and polar bears will be incidental nonlethal, temporary takes of animals.

The documented impacts of previous Industry activities on walruses and polar bears, taking into consideration cumulative effects, suggests that the types of activities analyzed for this proposed ITR will have minimal effects and will be short-term, temporary behavioral changes. The vast majority of reported polar bear observations have been of polar bears moving through the

Beaufort Sea ITR region, undisturbed by the Industry activity.

3. The footprint of the proposed Industry activities is expected to be small relative to the range of the walrus and polar bear stocks.

The relatively small area of Industry activity compared to the ranges of walruses and polar bears will reduce the potential of their exposure to and disturbance from Industry activities.

4. The type of harassment that is estimated is not expected to have effects on annual rates of recruitment of survival.

The Service does not anticipate any lethal or injurious take that would remove individual polar bears or Pacific walruses from the population or prevent their successful reproduction. Harassment events are anticipated to be limited to human interactions that lead to short-term behavioral disturbances. These disturbances would not affect the rates of recruitment or survival for the walrus and polar bear stocks. These proposed regulations do not authorize lethal take, and we do not anticipate any lethal take will occur.

4. Mitigation measures will limit potential effects of Industry activities.

If these regulations are finalized, holders of an LOA will be required to adopt monitoring requirements and mitigation measures designed to reduce the potential impacts of their operations on walruses and polar bears. Seasonal restrictions, early detection monitoring programs, den detection surveys for polar bears, and adaptive mitigation and management responses based on real-time monitoring information (described in these regulations) will be used to avoid or minimize interactions with walruses and polar bears and, therefore, limit potential Industry disturbance of these animals.

In making this finding, we considered the following: The distribution of the species; the biological characteristics of the species; the nature of Industry activities; the potential effects of Industry activities and potential oil spills on the species; the probability of oil spills occurring; the documented impacts of Industry activities on the species, taking into consideration cumulative effects; the potential impacts of climate change, where both walruses and polar bears can potentially be displaced from preferred habitat; mitigation measures designed to minimize Industry impacts through adaptive management; and other data provided by Industry monitoring programs in the Beaufort and Chukchi Seas.

We also considered the specific Congressional direction in balancing the

potential for a significant impact with the likelihood of that event occurring. The specific Congressional direction that justifies balancing probabilities with impacts follows:

If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information (53 FR 8474, March 15, 1988; 132 Cong. Rec. S 16305 (October. 15, 1986)).

We reviewed the effects of the oil and gas Industry activities on walruses and polar bears, including impacts from surface interactions, aircraft overflights, maritime activities, and oil spills. Based on our review of these potential impacts, past LOA monitoring reports, and the biology and natural history of walrus and polar bear, we conclude that any incidental take reasonably likely to occur as a result of projected activities will be limited to short term behavioral disturbances that would not affect the rates of recruitment or survival for the walrus and polar bear stocks. These proposed regulations do not authorize lethal take, and we do not anticipate any lethal take will occur.

The probability of an oil spill that will cause significant impacts to walruses and polar bears appears extremely low. We have included information from both offshore and onshore projects in our oil spill analysis. We have analyzed the likelihood of a marine oil spill of the magnitude necessary to lethally take a significant number of polar bears for offshore projects and, through a risk assessment analysis, found that it is unlikely that there will be any lethal take associated with a release of oil. In the unlikely event of a catastrophic spill, we will take immediate action to minimize the impacts to these species and reconsider the appropriateness of authorizations for incidental taking through section 101(a)(5)(A) of the MMPA.

We have evaluated climate change regarding walruses and polar bears. Climate change is a global phenomenon and was considered as the overall driver of effects that could alter walrus and polar bear habitat and behavior. Although climate change is a pressing conservation issue for walruses and polar bears, we have concluded that the authorized taking of walruses and polar

bears during the activities proposed by Industry during this proposed 5-year rule will not adversely impact the survival of these species and will have no more than negligible effects.

#### Conclusion

We conclude that any incidental take reasonably likely to occur in association with the proposed Industry activities addressed under these proposed regulations will have no more than a negligible impact on the Pacific walrus population and the SBS stock of polar bears. We do not expect any resulting disturbance to negatively impact the rates of recruitment or survival for the walrus and polar bear stocks. These proposed regulations do not authorize lethal take, and we do not anticipate that any lethal take will occur.

#### *Least Practicable Adverse Impacts*

We evaluated the practicality and effectiveness of mitigation measures based on the nature, scope, and timing of Industry activities; the best available scientific information; and monitoring data during Industry activities in the specified geographic region. We have determined that the mitigation measures included within AOGA's request will ensure least practicable adverse impacts on polar bears and Pacific walruses (AOGA 2021).

The Service collaborated extensively with AOGA prior to the submission of their final Request to identify effective and practicable mitigation measures for the proposed activities. Polar bear den surveys before activities begin during the denning season, and the resulting 1.6-km (1-mi) operational exclusion zone around all known polar bear dens and restrictions on the timing and types of activities in the vicinity of dens will ensure that impacts to denning female polar bears and their cubs are minimized during this critical time. Minimum flight elevations over polar bear areas and flight restrictions around known polar bear dens would reduce the potential for bears to be disturbed by aircraft. Additionally, AOGA will implement mitigation measures to prevent the presence and impact of attractants such as the use of wildlife-resistant waste receptacles and enclosing access doors and stairs. These measures will be outlined in polar bear and walrus interaction plans that are developed in coordination with the Service prior to starting activities. Based on the information we currently have regarding den and aircraft disturbance and polar bear attractants, we concluded that the mitigation measures outlined in AOGA's request (AOGA 2021) will practically and effectively minimize

disturbance from the specified oil and gas activities.

#### *Impacts on Subsistence Uses*

Based on community consultations, locations of hunting areas, the potential overlap of hunting areas and Industry projects, the best scientific information available, and the results of monitoring data, we proposed a finding that take caused by oil and gas exploration, development, and production activities in the specified geographic region will not have an unmitigable adverse impact on the availability of walruses and polar bears for taking for subsistence uses during the proposed timeframe. In making this proposed finding, we considered the following: Records on subsistence harvest from the Service's Marking, Tagging, and Reporting Program; community consultations; effectiveness of the Plan of Cooperation (POC) process between Industry and affected Native communities; and anticipated 5-year effects of Industry activities on subsistence hunting.

While walruses and polar bears represent a small portion, in terms of the number of animals, of the total subsistence harvest for the communities of Utqiagvik, Nuiqsut, and Kaktovik, the harvest of these species is important to Alaska Natives. Prior to receipt of an LOA, Industry must provide evidence to us that community consultations have occurred or that an adequate POC has been presented to the subsistence communities. Industry will be required to contact subsistence communities that may be affected by its activities to discuss potential conflicts caused by location, timing, and methods of proposed operations. Industry must make reasonable efforts to ensure that activities do not interfere with subsistence hunting and that adverse effects on the availability of walruses and polar bear are minimized. Although multiple meetings for multiple projects from numerous operators have already taken place, no official concerns have been voiced by the Alaska Native communities regarding Industry activities limiting availability of walruses or polar bears for subsistence uses. However, should such a concern be voiced as Industry continues to reach out to the Alaska Native communities, development of POCs, which must identify measures to minimize any adverse effects, will be required. The POC will ensure that oil and gas activities will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. This POC must provide the procedures addressing how Industry will work with the affected Alaska Native communities

and what actions will be taken to avoid interference with subsistence hunting of walruses and polar bears, as warranted.

The Service has not received any reports and is aware of no information that indicates that walruses or polar bears are being or will be deflected from hunting areas or impacted in any way that diminishes their availability for subsistence use by the expected level of oil and gas activity. If there is evidence during the 5-year period of the proposed regulations that oil and gas activities are affecting the availability of walruses or polar bears for take for subsistence uses, we will reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

#### **Monitoring and Reporting**

The purpose of monitoring requirements is to assess the effects of industrial activities on walruses and polar bears, ensure that take is consistent with that anticipated in the negligible impact and subsistence use analyses, and detect any unanticipated effects on the species or stocks. Monitoring plans document when and how bears and walruses are encountered, the number of bears and walruses, and their behavior during the encounter. This information allows the Service to measure encounter rates and trends of walrus and polar bear activity in the industrial areas (such as numbers and gender, activity, seasonal use) and to estimate numbers of animals potentially affected by Industry. Monitoring plans are site-specific, dependent on the proximity of the activity to important habitat areas, such as den sites, travel corridors, and food sources; however, Industry is required to report all sightings of walruses and polar bears. To the extent possible, monitors will record group size, age, sex, reaction, duration of interaction, and closest approach to Industry onshore. Activities within the specified geographic region may incorporate daily watch logs as well, which record 24-hour animal observations throughout the duration of the project. Polar bear monitors will be incorporated into the monitoring plan if bears are known to frequent the area or known polar bear dens are present in the area. At offshore Industry sites, systematic monitoring protocols will be implemented to statistically monitor observation trends of walruses or polar bears in the nearshore areas where they usually occur.

Monitoring activities will be summarized and reported in a formal report each year. The applicant must

submit an annual monitoring and reporting plan at least 90 days prior to the initiation of a proposed activity, and the applicant must submit a final monitoring report to us no later than 90 days after the expiration of the LOA. We base each year's monitoring objective on the previous year's monitoring results.

We require an approved plan for monitoring and reporting the effects of oil and gas industry exploration, development, and production activities on polar bears and walruses prior to issuance of an LOA. Since production activities are continuous and long term, upon approval, LOAs and their required monitoring and reporting plans will be issued for the life of the activity or until the expiration of the regulations, whichever occurs first. Each year, prior to January 15, we will require that the operator submit development and production activity monitoring results of the previous year's activity. We require approval of the monitoring results for continued operation under the LOA.

#### Request for Public Comments

If you wish to comment on this proposed regulation or the associated draft environmental assessment, you may submit your comments by any of the methods described in **ADDRESSES**. Please identify if you are commenting on the proposed regulation, the draft environmental assessment, or both, make your comments as specific as possible, confine them to issues pertinent to the proposed regulation, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph that you are addressing. The Service will consider all comments that are received by the close of the comment period (see **DATES**).

#### Clarity of This Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your

comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

#### Required Determinations

##### Treaty Obligations

The proposed ITR is consistent with the 1973 Agreement on the Conservation of Polar Bears, a multilateral treaty executed in Oslo, Norway, among the Governments of Canada, Denmark, Norway, the Soviet Union, and the United States. Article II of this Polar Bear Agreement lists three obligations of the Parties in protecting polar bear habitat. Parties are obliged to: (1) Take appropriate action to protect the ecosystem of which polar bears are a part; (2) give special attention to habitat components such as denning and feeding sites and migration patterns; and (3) manage polar bear subpopulations in accordance with sound conservation practices based on the best available scientific data.

This rule, if finalized, will further consistency with the Service's treaty obligations through incorporation of mitigation measures that ensure the protection of polar bear habitat. Any LOAs issued pursuant to this rule would adhere to the requirements of the rule and would be conditioned upon including area or seasonal timing limitations or prohibitions, such as placing 1.6-km (1-mi) avoidance buffers around known or observed dens (which halts or limits activity until the bear naturally leaves the den) and monitoring the effects of the activities on polar bears. Available denning habitat maps are provided by the USGS.

##### National Environmental Policy Act (NEPA)

Per the National Environmental Policy Act (NEPA; 42 U.S.C. 4321, *et seq.*), the Service must evaluate the effects of the proposed action on the human environment. We have prepared a draft environmental assessment (EA) in conjunction with this proposed rulemaking. Subsequent to the closure of the comment period for this proposed rule, we will finalize the EA and decide whether this rulemaking is a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the NEPA. See Request for Public Comments, above, if you wish to provide comment on our draft EA.

#### Endangered Species Act

Under the ESA, all Federal agencies are required to ensure the actions they authorize are not likely to jeopardize the continued existence of any threatened or endangered species or result in destruction or adverse modification of critical habitat. In 2008, the Service listed the polar bear as a threatened species under the ESA (73 FR 28212, May 15, 2008) and later designated critical habitat for polar bear subpopulations in the United States, effective January 6, 2011 (75 FR 76086, December 7, 2010). Consistent with these statutory requirements, the Service's Marine Mammal Management Office has initiated intra-Service section 7 consultation regarding the effects of these regulations on polar bears with the Service's Fairbanks' Ecological Services Field Office. The Service has found the issuance of the proposed ITR will not affect other listed species or designated critical habitat. We will complete the consultation prior to finalizing these proposed regulations.

#### Regulatory Planning and Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules for a determination of significance. OMB has designated this rule as not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, reduce uncertainty, and 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 proposed rule in a manner consistent with these requirements.

OIRA bases its determination upon the following four criteria: (a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government; (b) whether the rule will create inconsistencies with other Federal agencies' actions; (c) whether the rule

will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; (d) whether the rule raises novel legal or policy issues.

Expenses will be related to, but not necessarily limited to: The development of applications for LOAs; monitoring, recordkeeping, and reporting activities conducted during Industry oil and gas operations; development of polar bear interaction plans; and coordination with Alaska Natives to minimize effects of operations on subsistence hunting. Compliance with the proposed rule is not expected to result in additional costs to Industry that it has not already borne under all previous ITRs. Realistically, these costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations. The actual costs to Industry to develop the request for promulgation of regulations and LOA requests probably do not exceed \$500,000 per year, short of the “major rule” threshold that would require preparation of a regulatory impact analysis. As is presently the case, profits will accrue to Industry; royalties and taxes will accrue to the Government; and the proposed rule will have little or no impact on decisions by Industry to relinquish tracts and write off bonus payments.

#### *Small Business Regulatory Enforcement Fairness Act*

We have determined that this proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### *Regulatory Flexibility Act*

We have also determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Oil companies and their contractors conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the regulations, and these potential applicants have not been identified as small businesses. Therefore, neither a regulatory flexibility analysis nor a small entity compliance guide is required.

#### *Takings Implications*

This proposed rule does not have takings implications under Executive Order 12630 because it authorizes the nonlethal, incidental, but not intentional, take of walruses and polar bears by Industry and thereby, exempts these companies from civil and criminal liability as long as they operate in compliance with the terms of their LOAs. Therefore, a takings implications assessment is not required.

#### *Federalism Effects*

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132. The MMPA gives the Service the authority and responsibility to protect walruses and polar bears.

#### *Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this proposed rule will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. This rule will not produce a Federal mandate of \$100 million or greater in any year, *i.e.*, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

#### *Government-to-Government Coordination*

It is our responsibility to communicate and work directly on a Government-to-Government basis with federally recognized Tribes in developing programs for healthy ecosystems. We are also required to consult with Alaska Native Corporations. We seek their full and meaningful participation in evaluating and addressing conservation concerns for protected species. It is our goal to remain sensitive to Alaska Native culture and to make information available to Alaska Natives. Our efforts are guided by the following policies and directives:

- (1) The Native American Policy of the Service (January 20, 2016);
- (2) the Alaska Native Relations Policy (currently in draft form);
- (3) Executive Order 13175 (January 9, 2000);
- (4) Department of the Interior Secretarial Orders 3206 (June 5, 1997), 3225 (January 19, 2001), 3317

(December 1, 2011), and 3342 (October 21, 2016);

(5) the Department of the Interior’s policies on consultation with Tribes and with Alaska Native Corporations; and

(6) Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships (January 21, 2021).

We have evaluated possible effects of the proposed ITR on federally recognized Alaska Native Tribes and corporations and have concluded the issuance of the ITR does not require formal consultation with Alaska Native Tribes and corporations. Through the proposed ITR process identified in the MMPA, the AOGA has presented a communication process, culminating in a POC if needed, with the Native organizations and communities most likely to be affected by their work. The applicant has engaged these groups in informational communications. We invited continued discussion about the proposed ITR.

In addition, to facilitate co-management activities, the Service maintains cooperative agreements with the Eskimo Walrus Commission (EWC) and the Qayassiq Walrus Commission (QWC) and is working towards developing such an agreement with the newly formed Alaska Nannut Co-Management Council (ANCC). The cooperative agreements fund a wide variety of management issues, including: Commission co-management operations; biological sampling programs; harvest monitoring; collection of Native knowledge in management; international coordination on management issues; cooperative enforcement of the MMPA; and development of local conservation plans. To help realize mutual management goals, the Service, EWC, ANCC, and QWC regularly hold meetings to discuss future expectations and outline a shared vision of co-management.

The Service also has ongoing cooperative relationships with the North Slope Borough and the Inupiat-Inuvialuit Game Commission where we work cooperatively to ensure that data collected from harvest and research are used to ensure that polar bears are available for harvest in the future; provide information to co-management partners that allows them to evaluate harvest relative to their management agreements and objectives; and provide information that allows evaluation of the status, trends, and health of polar bear subpopulations.

**Civil Justice Reform**

The Department's Office of the Solicitor has determined that these proposed regulations do not unduly burden the judicial system and meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

**Paperwork Reduction Act**

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with incidental take of marine mammals and assigned OMB control number 1018-0070 (expires January 31, 2022). 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.

**Energy Effects**

Executive Order 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This proposed rule provides exceptions from the MMPA's taking prohibitions for Industry engaged in specified oil and gas activities in the specified geographic region. By providing certainty regarding compliance with the MMPA, this proposed rule will have a positive effect on Industry and its activities. Although the proposed rule requires Industry to take a number of actions, these actions have been undertaken by Industry for many years as part of similar past regulations. Therefore, this proposed rule is not expected to significantly affect energy supplies, distribution, or use and does not constitute a significant energy action. No statement of energy effects is required.

**References**

For a list of the references cited in this rule, see Docket No. FWS-R7-ES-2021-0037, available at <http://www.regulations.gov>.

**List of Subjects in 50 CFR Part 18**

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

For the reasons set forth in the preamble, the Service proposes to amend part 18, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below.

**PART 18—MARINE MAMMALS**

- 1. The authority citation of part 18 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

- 2. Revise subpart J to read as follows:

**Subpart J—Nonlethal Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, Production, and Other Substantially Similar Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska**

Sec.

18.119 Specified activities covered by this subpart.

18.120 Specified geographic region where this subpart applies.

18.121 Dates this subpart is in effect.

18.122 Procedure to obtain a Letter of Authorization (LOA).

18.123 How the Service will evaluate a request for a Letter of Authorization (LOA).

18.124 Authorized take allowed under a Letter of Authorization (LOA).

18.125 Prohibited take under a Letter of Authorization (LOA).

18.126 Mitigation.

18.127 Monitoring.

18.128 Reporting requirements.

18.129 Information collection requirements.

**Subpart J—Nonlethal Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, Production, and Other Substantially Similar Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska**

**§ 18.119 Specified activities covered by this subpart.**

Regulations in this subpart apply to the nonlethal incidental, but not intentional, take of small numbers of polar bear and Pacific walrus by certain U.S. citizens while engaged in oil and gas exploration, development, production, and/or other substantially similar activities in the Beaufort Sea and adjacent northern coast of Alaska.

**§ 18.120 Specified geographic region where this subpart applies.**

This subpart applies to the specified geographic region that encompasses all Beaufort Sea waters east of a north-south line through Point Barrow, Alaska (N71.39139, W156.475, BGN 1944), and approximately 322 kilometers (km) (~200 miles (mi)) north of Point Barrow, including all Alaska State waters and Outer Continental Shelf waters, and east of that line to the Canadian border.

(a) The offshore boundary of the Beaufort Sea incidental take regulations (ITR) region match the boundary of the Bureau of Ocean Energy Management Beaufort Sea Planning area, approximately 322 km (~200 mi) offshore. The onshore region is the same north/south line at Utqiagvik, 40.2 km (25 mi) inland and east to the Canning River.

(b) The Arctic National Wildlife Refuge and the associated offshore waters within the refuge boundaries is not included in the Beaufort Sea ITR region. Figure 1 shows the area where this subpart applies.

Figure 1 to § 18.120.

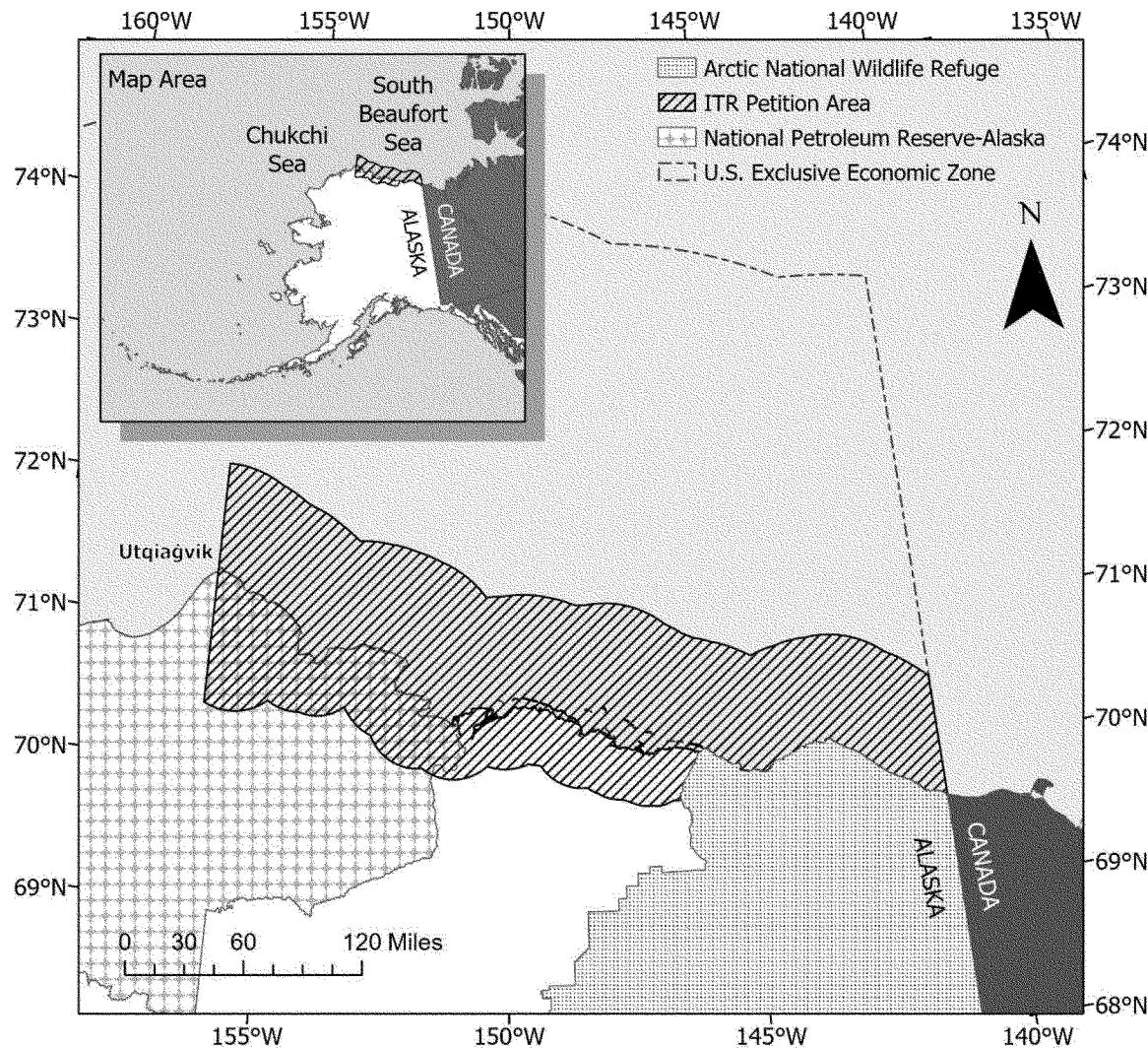


Figure 1—Map of the Beaufort Sea ITR region.

**§ 18.121 Dates this subpart is in effect.**

Regulations in this subpart are effective from [EFFECTIVE DATE OF FINAL RULE] through [DATE 5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE], for year-round oil and gas exploration, development, production, and other substantially similar activities.

**§ 18.122 Procedure to obtain a Letter of Authorization (LOA).**

(a) An applicant must be a U.S. citizen as defined in § 18.27(c) and among those entities specified in the Request for this rule or a subsidiary, subcontractor, or successor-in-interest to such an entity. The entities specified in the Request are the Alaska Oil and Gas Association, which includes Alyeska Pipeline Service Company, BlueCrest Energy, Inc., Chevron Corporation,

ConocoPhillips Alaska, Inc., Eni U.S. Operating Co. Inc., ExxonMobil Alaska Production Inc., Furie Operating Alaska, LLC, Glacier Oil and Gas Corporation, Hilcorp Alaska, LLC, Marathon Petroleum, Petro Star Inc., Repsol, and Shell Exploration and Production Company, Alaska Gasline Development Corporation, Arctic Slope Regional Corporation Energy Services, Oil Search (Alaska), LLC, and Qilak LNG, Inc.

(b) If an applicant proposes to conduct oil and gas industry exploration, development, production, and/or other substantially similar activity in the Beaufort Sea ITR region described in § 18.120 that may cause the taking of Pacific walruses and/or polar bears and wants nonlethal incidental take authorization under the regulations in this subpart J, the applicant must

apply for an LOA. The applicant must submit the request for authorization to the Service's Alaska Region Marine Mammals Management Office (see § 2.2 for address) at least 90 days prior to the start of the activity.

(c) The request for an LOA must include the following information and must comply with the requirements set forth in §§ 18.126 through 18.128:

(1) A plan of operations that describes in detail the activity (e.g., type of project, methods, and types and numbers of equipment and personnel, etc.), the dates and duration of the activity, and the specific locations of and areas affected by the activity.

(2) A site-specific marine mammal monitoring and mitigation plan to monitor and mitigate the effects of the

activity on Pacific walruses and polar bears.

(3) A site-specific Pacific walrus and polar bear safety, awareness, and interaction plan. The plan for each activity and location will detail the policies and procedures that will provide for the safety and awareness of personnel, avoid interactions with Pacific walruses and polar bears, and minimize impacts to these animals.

(4) A Plan of Cooperation to mitigate potential conflicts between the activity and subsistence hunting, where relevant. Applicants must provide documentation of communication with potentially affected subsistence communities along the Beaufort Sea coast (*i.e.*, Kaktovik, Nuiqsut, and Utqigvik) and appropriate subsistence user organizations (*i.e.*, the Alaska Nannut Co-Management Council, the Eskimo Walrus Commission, or North Slope Borough) to discuss the location, timing, and methods of activities and identify and mitigate any potential conflicts with subsistence walrus and polar bear hunting activities. Applicants must specifically inquire of relevant communities and organizations if the activity will interfere with the availability of Pacific walruses and/or polar bears for the subsistence use of those groups. Applications for an LOA must include documentation of all consultations with potentially affected user groups. Documentation must include a summary of any concerns identified by community members and hunter organizations and the applicant's responses to identified concerns.

**§ 18.123 How the Service will evaluate a request for a Letter of Authorization (LOA).**

(a) We will evaluate each request for an LOA based on the specific activity and the specific geographic location. We will determine whether the level of activity identified in the request exceeds that analyzed by us in considering the number of animals estimated to be taken and evaluating whether there will be a negligible impact on the species or stock and an unmitigable adverse impact on the availability of the species or stock for subsistence uses. If the level of activity is greater, we will reevaluate our findings to determine if those findings continue to be appropriate based on the combined estimated take of the greater level of activity that the applicant has requested and all other activities proposed during the time of the activities in the LOA application. Depending on the results of the evaluation, we may grant the authorization, add further conditions, or deny the authorization.

(b) In accordance with § 18.27(f)(5), we will make decisions concerning withdrawals of an LOA, either on an individual or class basis, only after notice and opportunity for public comment.

(c) The requirement for notice and public comment in paragraph (b) of this section will not apply should we determine that an emergency exists that poses a significant risk to the well-being of the species or stocks of polar bears or Pacific walruses.

**§ 18.124 Authorized take allowed under a Letter of Authorization (LOA).**

(a) An LOA allows for the nonlethal, non-injurious, incidental, but not intentional take by Level B harassment, as defined in § 18.3 and under section 3 of the Marine Mammal Protection Act (16 U.S.C. 1371 *et seq.*), of Pacific walruses and/or polar bears while conducting oil and gas industry exploration, development, production, and/or other substantially similar activities within the Beaufort Sea ITR region described in § 18.120.

(b) Each LOA will identify terms and conditions for each activity and location.

**§ 18.125 Prohibited take under a Letter of Authorization (LOA).**

Except as otherwise provided in this subpart, prohibited taking is described in § 18.11 as well as:

(a) Intentional take, Level A harassment, as defined in section 3 of the Marine Mammal Protection Act (16 U.S.C. 1362 *et seq.*), and lethal incidental take of polar bears or Pacific walruses; and

(b) Any take that fails to comply with this subpart or with the terms and conditions of an LOA.

**§ 18.126 Mitigation.**

(a) *Mitigation measures for all Letters of Authorization (LOAs).* Holders of an LOA must implement policies and procedures to conduct activities in a manner that affects the least practicable adverse impact on Pacific walruses and/or polar bears, their habitat, and the availability of these marine mammals for subsistence uses. Adaptive management practices, such as temporal or spatial activity restrictions in response to the presence of marine mammals in a particular place or time or the occurrence of Pacific walruses and/or polar bears engaged in a biologically significant activity (*e.g.*, resting, feeding, denning, or nursing, among others), must be used to avoid interactions with and minimize impacts to these animals and their availability for subsistence uses.

(1) All holders of an LOA must:

(i) Cooperate with the Service's Marine Mammals Management Office and other designated Federal, State, and local agencies to monitor and mitigate the impacts of oil and gas industry activities on Pacific walruses and polar bears.

(ii) Designate trained and qualified personnel to monitor for the presence of Pacific walruses and polar bears, initiate mitigation measures, and monitor, record, and report the effects of oil and gas industry activities on Pacific walruses and/or polar bears.

(iii) Have an approved Pacific walrus and polar bear safety, awareness, and interaction plan on file with the Service's Marine Mammals Management Office and onsite and provide polar bear awareness training to certain personnel. Interaction plans must include:

(A) The type of activity and where and when the activity will occur (*i.e.*, a summary of the plan of operation);

(B) A food, waste, and other "bear attractants" management plan;

(C) Personnel training policies, procedures, and materials;

(D) Site-specific walrus and polar bear interaction risk evaluation and mitigation measures;

(E) Walrus and polar bear avoidance and encounter procedures; and

(F) Walrus and polar bear observation and reporting procedures.

(2) All applicants for an LOA must contact affected subsistence communities and hunter organizations to discuss potential conflicts caused by the activities and provide the Service documentation of communications as described in § 18.122.

(b) *Mitigation measures for onshore activities.* Holders of an LOA must undertake the following activities to limit disturbance around known polar bear dens:

(1) *Attempt to locate polar bear dens.* Holders of an LOA seeking to carry out onshore activities during the denning season (November–April) must conduct two separate surveys for occupied polar bear dens in all denning habitat within 1.6 km (1 mi) of proposed activities using aerial infrared imagery. Further, all denning habitat within 1.6 km (1 mi) of areas of proposed seismic surveys must be surveyed three separate times with aerial infrared technology. The first survey must occur between the dates of November 25 and December 15, the second between the dates of December 5 and December 31, and the third (if required) between the dates of December 15 and January 15. All observed or suspected polar bear dens must be reported to the Service prior to the initiation of activities.

(2) *Observe the exclusion zone around known polar bear dens.* Operators must observe a 1.6-km (1-mi) operational exclusion zone around all putative polar bear dens during the denning season (November–April, or until the female and cubs leave the areas). Should previously unknown occupied dens be discovered within 1 mile of activities, work must cease and the Service contacted for guidance. The Service will evaluate these instances on a case-by-case basis to determine the appropriate action. Potential actions may range from cessation or modification of work to conducting additional monitoring, and the holder of the authorization must comply with any additional measures specified.

(3) *Use the den habitat map developed by the USGS.* A map of potential coastal polar bear denning habitat can be found at: [http://alaska.usgs.gov/science/biology/polar\\_bears/denning.html](http://alaska.usgs.gov/science/biology/polar_bears/denning.html). This measure ensures that the location of potential polar bear dens is considered when conducting activities in the coastal areas of the Beaufort Sea.

(4) *Polar bear den restrictions.* Restrict the timing of the activity to limit disturbance around dens.

(c) *Mitigation measures for operational and support vessels.* (1) Operational and support vessels must be staffed with dedicated marine mammal observers to alert crew of the presence of walruses and polar bears and initiate adaptive mitigation responses.

(2) At all times, vessels must maintain the maximum distance possible from concentrations of walruses or polar bears. Under no circumstances, other than an emergency, should any vessel approach within an 805-m (0.5-mi) radius of walruses or polar bears observed on land or ice.

(3) Vessel operators must take every precaution to avoid harassment of concentrations of feeding walruses when a vessel is operating near these animals. Vessels should reduce speed and maintain a minimum 805-m (0.5-mi) operational exclusion zone around feeding walrus groups. Vessels may not be operated in such a way as to separate members of a group of walruses from other members of the group. When weather conditions require, such as when visibility drops, vessels should adjust speed accordingly to avoid the likelihood of injury to walruses.

(4) Vessels bound for the Beaufort Sea ITR Region may not transit through the Chukchi Sea prior to July 1. This operating condition is intended to allow walruses the opportunity to move through the Bering Strait and disperse from the confines of the spring lead

system into the Chukchi Sea with minimal disturbance. It is also intended to minimize vessel impacts upon the availability of walruses for Alaska Native subsistence hunters. Exemption waivers to this operating condition may be issued by the Service on a case-by-case basis, based upon a review of seasonal ice conditions and available information on walrus and polar bear distributions in the area of interest.

(5) All vessels must avoid areas of active or anticipated walrus or polar bear subsistence hunting activity as determined through community consultations.

(6) In association with marine activities, we may require trained marine mammal monitors on the site of the activity or onboard ships, aircraft, icebreakers, or other support vessels or vehicles to monitor the impacts of Industry's activity on polar bear and Pacific walruses.

(d) *Mitigation measures for aircraft.* (1) Operators of support aircraft should, at all times, conduct their activities at the maximum distance possible from concentrations of walruses or polar bears.

(2) Aircraft operations within the ITR area should maintain an altitude of 1,500 ft above ground level when operationally possible.

(3) Under no circumstances, other than an emergency, should aircraft operate at an altitude lower than 457 m (1,500 ft) within 805 m (0.5 mi) of walruses or polar bears observed on ice or land. Helicopters may not hover or circle above such areas or within 805 m (0.5 mi) of such areas. When weather conditions do not allow a 457-m (1,500-ft) flying altitude, such as during severe storms or when cloud cover is low, aircraft may be operated below this altitude. However, when weather conditions necessitate operation of aircraft at altitudes below 457 m (1,500 ft), the operator must avoid areas of known walrus and polar bear concentrations and should take precautions to avoid flying directly over or within 805 m (0.5 mile) of these areas.

(4) Plan all aircraft routes to minimize any potential conflict with active or anticipated walrus or polar bear hunting activity as determined through community consultations.

(e) *Mitigation measures for the subsistence use of walruses and polar bears.* Holders of an LOA must conduct their activities in a manner that, to the greatest extent practicable, minimizes adverse impacts on the availability of Pacific walruses and polar bears for subsistence uses.

(1) *Community consultation.* Prior to receipt of an LOA, applicants must consult with potentially affected communities and appropriate subsistence user organizations to discuss potential conflicts with subsistence walrus and polar bear hunting caused by the location, timing, and methods of operations and support activities (see § 18.122 for details). If community concerns suggest that the activities may have an adverse impact on the subsistence uses of these species, the applicant must address conflict avoidance issues through a plan of cooperation as described in paragraph (e)(2) of this section.

(2) *Plan of cooperation (POC).* When appropriate, a holder of an LOA will be required to develop and implement a Service-approved POC.

(i) The POC must include a description of the procedures by which the holder of the LOA will work and consult with potentially affected subsistence hunters and a description of specific measures that have been or will be taken to avoid or minimize interference with subsistence hunting of walruses and polar bears and to ensure continued availability of the species for subsistence use.

(ii) The Service will review the POC to ensure that any potential adverse effects on the availability of the animals are minimized. The Service will reject POCs if they do not provide adequate safeguards to ensure the least practicable adverse impact on the availability of walruses and polar bears for subsistence use.

#### **§ 18.127 Monitoring.**

Holders of an LOA must develop and implement a site-specific, Service-approved marine mammal monitoring and mitigation plan to monitor and evaluate the effectiveness of mitigation measures and the effects of activities on walruses, polar bears, and the subsistence use of these species and provide trained, qualified, and Service-approved onsite observers to carry out monitoring and mitigation activities identified in the marine mammal monitoring and mitigation plan.

#### **§ 18.128 Reporting requirements.**

Holders of a Letter of Authorization (LOA) must report the results of monitoring and mitigation activities to the Service's Marine Mammals Management Office via email at: [fw7\\_mmm\\_reports@fws.gov](mailto:fw7_mmm_reports@fws.gov).

(a) *In-season monitoring reports—(1) Activity progress reports.* Holders of an LOA must:

(i) Notify the Service at least 48 hours prior to the onset of activities;

(ii) Provide the Service weekly progress reports of any significant changes in activities and/or locations; and

(iii) Notify the Service within 48 hours after ending of activities.

(2) *Walrus observation reports.*

Holders of an LOA must report, on a weekly basis, all observations of walruses during any Industry activity. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the Service). Information in the observation report must include, but is not limited to:

(i) Date, time, and location of each walrus sighting;

(ii) Number of walruses;

(iii) Sex and age (if known);

(iv) Observer name and contact information;

(v) Weather, visibility, sea state, and sea-ice conditions at the time of observation;

(vi) Estimated range at closest approach;

(vii) Industry activity at time of sighting;

(viii) Behavior of animals sighted;

(ix) Description of the encounter;

(x) Duration of the encounter; and

(xi) Mitigation actions taken.

(3) *Polar bear observation reports.*

Holders of an LOA must report, within 48 hours, all observations of polar bears and potential polar bear dens, during any Industry activity. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the Service). Information in the observation report must include, but is not limited to:

(i) Date, time, and location of observation;

(ii) Number of bears;

(iii) Sex and age (if known);

(iv) Observer name and contact information;

(v) Weather, visibility, sea state, and sea-ice conditions at the time of observation;

(vi) Estimated closest distance of bears from personnel and facilities;

(vii) Industry activity at time of sighting;

(viii) Possible attractants present;

(ix) Bear behavior;

(x) Description of the encounter;

(xi) Duration of the encounter; and

(xii) Mitigation actions taken.

(b) *Notification of LOA incident report.* Holders of an LOA must report, as soon as possible, but within 48 hours, all LOA incidents during any Industry activity. An LOA incident is any situation when specified activities exceed the authority of an LOA, when a mitigation measure was required but not enacted, or when injury or death of a walrus or polar bear occurs. Reports must include:

(1) All information specified for an observation report;

(2) A complete detailed description of the incident; and

(3) Any other actions taken.

(c) *Final report.* The results of monitoring and mitigation efforts identified in the marine mammal monitoring and mitigation plan must be submitted to the Service for review within 90 days of the expiration of an LOA, or for production LOAs, an annual report by January 15th of each calendar year. Upon request, final report data must be provided in a common electronic format (to be specified by the Service). Information in the final (or annual) report must include, but is not limited to:

(1) Copies of all observation reports submitted under the LOA;

(2) A summary of the observation reports;

(3) A summary of monitoring and mitigation efforts including areas, total hours, total distances, and distribution;

(4) Analysis of factors affecting the visibility and detectability of walruses and polar bears during monitoring;

(5) Analysis of the effectiveness of mitigation measures;

(6) Analysis of the distribution, abundance, and behavior of walruses and/or polar bears observed; and

(7) Estimates of take in relation to the specified activities.

**§ 18.129 Information collection requirements.**

(a) We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. OMB has approved the collection of information contained in this subpart and assigned OMB control number 1018-0070. You must respond to this information collection request to obtain a benefit pursuant to section 101(a)(5) of the Marine Mammal Protection Act. We will use the information to:

(1) Evaluate the application and determine whether or not to issue specific Letters of Authorization; and

(2) Monitor impacts of activities and effectiveness of mitigation measures conducted under the Letters of Authorization.

(b) Comments regarding the burden estimate or any other aspect of this requirement must be submitted to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, at the address listed in 50 CFR 2.1.

**Shannon A. Estenoz,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks, Exercising the Delegated Authority of the Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2021-11496 Filed 5-28-21; 8:45 am]

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# FEDERAL REGISTER

### Part III

# Department of the Interior

Fish and Wildlife Service

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status With Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment; Proposed Rule

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R2-ES-2021-0015;  
FF09E21000 FXES1110900000 212]

**RIN 1018-BB27**

**Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status With Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to list two Distinct Population Segments (DPSs) of the lesser prairie-chicken (*Tympanuchus pallidicinctus*), a grassland bird known from southeastern Colorado, western Kansas, eastern New Mexico, western Oklahoma, and the Texas Panhandle under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the lesser prairie-chicken. After a review of the best available scientific and commercial information, we find that listing the Southern DPS as endangered is warranted, and that listing the Northern DPS as threatened is warranted. Accordingly, we propose to list the Southern DPS as an endangered species under the Act and the Northern DPS 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 will add these two DPSs to the List of Endangered and Threatened Wildlife and extend the Act’s protections to them. We also are notifying the public that we have scheduled informational meetings followed by public hearings on the proposed rule.

**DATES:** We will accept comments received or postmarked on or before August 2, 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 a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by July 16, 2021.

**Public informational meeting and public hearing:** We will hold a public informational session from 5 p.m. to 6 p.m., Central Time, followed by a public

hearing from 6:30 p.m. to 8:30 p.m., Central Time, on July 8, 2021. We will hold a second public informational session from 5 p.m. to 6 p.m., Central Time, followed by a public hearing from 6:30 p.m. to 8:30 p.m., Central Time, on July 14, 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-R2-ES-2021-0015, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment Now!”

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R2-ES-2021-0015, 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 Information Requested, below, for more information).

**Public informational meeting and public hearing:** The public informational meetings and the public hearings will be held virtually using the Zoom platform. See Public Hearing, below, for more information.

**FOR FURTHER INFORMATION CONTACT:**

Debra Bills, Field Supervisor, Arlington Ecological Services Field Office, 2005 NE Green Oaks Blvd., Suite 140, Arlington, TX 76006; telephone 817-277-1129. 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 designation of

critical habitat can only be completed by issuing a rule.

**What this document does.** We propose the listing of the Northern DPS of the lesser prairie-chicken as a threatened species with a rule under section 4(d) of the Act and the Southern DPS of the lesser prairie-chicken as an endangered species under the Act.

**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 make these determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account those efforts being made to protect the species.

We have determined that both the northern and southern parts of the lesser prairie-chicken’s range are discrete and significant under our DPS Policy and are, therefore, listable entities under the Act. The Southern DPS consists of the Shinnery Oak Ecoregion in New Mexico and Texas, and the Northern DPS consists of the Sand Sagebrush Ecoregion, the Mixed Grass Ecoregion, and the Short Grass/Conservation Reserve Program (CRP) Ecoregion in Texas, Oklahoma, Colorado, and Kansas. These two DPSs together encompass the entirety of the lesser prairie-chicken’s range. The primary threat impacting both DPSs is the ongoing loss of large, connected blocks of grassland and shrubland habitat. The Southern DPS has low resiliency, redundancy, and representation and is particularly vulnerable to severe droughts due to being located in the dryer and hotter southwestern portion of the range. Because the Southern DPS is currently at risk of extinction, we propose to list it as endangered.

In the Northern DPS, as a result of habitat loss and fragmentation, resiliency has been much reduced across two of the ecoregions in the Northern DPS when compared to historical conditions. However, this DPS still has redundancy across the three ecoregions and genetic and environmental representation. We expect habitat loss and fragmentation across the Northern DPS to continue into the foreseeable future, resulting in even further reduced resiliency. Because

the Northern DPS is at risk of extinction in the foreseeable future, we propose to list it as threatened.

**Peer review.** In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of 6 appropriate specialists regarding the species status assessment (SSA) report. We received responses from 4 specialists, which informed the proposed listing rule. The purpose of peer review is to ensure that our listing determinations and 4(d) rules are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the biology, habitat, and threats to the species.

#### Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other 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) Genetics and taxonomy;
  - (c) Historical and current range, including distribution patterns;
  - (d) Historical and current population levels, and current and projected trends; and
  - (e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the adequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing conservation measures and regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) Information on regulations that are necessary and advisable to provide for the conservation of the Northern DPS of the lesser prairie-chicken and that the Service can consider in developing a 4(d) rule for the DPS. In particular, information concerning the extent to which we should include any of the prohibitions associated with section 9 in the 4(d) rule or whether any other forms of take should be excepted from the prohibitions in the 4(d) rule.

(6) Information on whether an exception from the prohibitions associated with section 9 should be included in the 4(d) rule for the Northern DPS for industry and/or landowner participants who are enrolled in and operating in compliance with the mitigation framework included in the Range-Wide Conservation Plan for the Lesser Prairie-Chicken being administered by the Western Association of Fish and Wildlife Agencies but who do not have incidental take coverage via the companion Candidate Conservation Agreement with Assurances covering oil and gas activities.

(7) Which areas would be appropriate as critical habitat for the species and why areas should or should not be proposed for designation as critical habitat in the future, including whether there are threats to the species from human activity that would be expected to increase due to the designation and whether that increase in threat would outweigh the benefit of designation such that the designation of critical habitat may not be prudent.

(8) Specific information on:
 

- (a) The amount and distribution of habitat for the lesser prairie-chicken which should be considered for proposed critical habitat;
- (b) What may constitute "physical or biological features essential to the conservation of the species within the geographical range currently occupied by the species";
- (c) Where these features are currently found;
- (d) Whether any of these features may require special management considerations or practices;

(e) What areas are currently occupied and contain features essential to the conservation of the species should be included in the designation and why; and

(f) What unoccupied areas are essential for the conservation of the species and why. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your comments and materials concerning this proposed rule by one of the methods listed in

**ADDRESSES.** We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>.

Because we will consider all comments and information we receive 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 Southern DPS is threatened instead of endangered, or that the Northern DPS is endangered instead of threatened, or we may conclude that either DPS 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 for the Northern DPS if we conclude it is appropriate in light of comments and new information received. For example, we may expand the incidental-take prohibitions or the exceptions to those prohibitions in the 4(d) rule for the Northern DPS 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.

## List of Acronyms

We use many acronyms in this proposed rule. For the convenience of the reader, we define some of them here:

ACEC = Area of Critical Environmental Concern  
 BLM = Bureau of Land Management  
 CI = confidence interval  
 CCAA = candidate conservation agreement with assurances  
 CCA/A = candidate conservation agreement and candidate conservation agreement with assurances  
 CPW = Colorado Parks and Wildlife  
 CRP = Conservation Reserve Program  
 DPS = Distinct Population Segment  
 KDWPT = Kansas Department of Wildlife, Parks and Tourism  
 LPCI = Lesser Prairie-Chicken Initiative  
 LPN = Listing Priority Number  
 NRCS = Natural Resources Conservation Service  
 ODWC = Oklahoma Department of Wildlife Conservation  
 PFW = the Service's Partners for Fish and Wildlife Program  
 RMPA = Resource Management Plan Amendment  
 RWP = Lesser Prairie-Chicken Range-wide Conservation Plan  
 SSA = Species Status Assessment  
 TPWD = Texas Parks and Wildlife Department  
 USFS = U.S. Forest Service  
 WAFWA = Western Association of Fish and Wildlife Agencies

## Previous Federal Actions

In 1973, the Service's Office of Endangered Species published a list of threatened wildlife of the United States in Resource Publication 114, often referred to as the "Red Book." While this publication did not, by itself, provide any special protections, it served in part to solicit additional information regarding the status of the identified taxa. The lesser prairie-chicken was one of 70 birds included in this publication (Service 1973, pp. 134–135), but little Federal regulatory action occurred on the lesser prairie-chicken until 1995.

On October 6, 1995, we received a petition, dated October 5, 1995, from the Biodiversity Legal Foundation, Boulder, Colorado, and Marie E. Morrissey (petitioners). The petitioners requested that we list the lesser prairie-chicken as threatened throughout its known historical range in the United States. The petitioners also requested that critical habitat be designated as soon as the needs of the species are sufficiently well known. However, from October 1995 through April 1996, we were under a moratorium on listing actions as a result of Public Law 104–6, which, along with a series of continuing budget resolutions, eliminated or severely reduced our listing budget through

April 1996. We were unable to act on the petition during that period.

On July 8, 1997 (62 FR 36482), we announced our 90-day finding that the petition presented substantial information indicating that the petitioned action may be warranted. We subsequently published our 12-month finding for the lesser prairie-chicken on June 9, 1998 (63 FR 31400), concluding that the petitioned action was warranted but precluded by other higher priority listing actions. This 12-month finding identified the lesser prairie-chicken as a candidate for listing with a listing priority number (LPN) of 8, indicating that the magnitude of threats was moderate and the immediacy of the threats to the species was high.

On January 8, 2001 (66 FR 1295), we published our resubmitted petition findings for 25 animal species, including the lesser prairie-chicken, having outstanding "warranted-but-precluded" petition findings as well as notice of one candidate removal. The lesser prairie-chicken remained a candidate with an LPN of 8 in our October 30, 2001 (66 FR 54808); June 13, 2002 (67 FR 40657); May 4, 2004 (69 FR 24876); May 11, 2005 (70 FR 24870); September 12, 2006 (71 FR 53756); and December 6, 2007 (72 FR 69034) candidate notices of review. In our December 10, 2008 (73 FR 75176), candidate notice of review, we changed the LPN for the lesser prairie-chicken from an 8 to a 2. This change in LPN reflected a change in the magnitude of the threats from moderate to high primarily due to an anticipated increase in the development of wind energy and associated placement of transmission lines throughout the estimated occupied range of the lesser prairie-chicken. Our November 9, 2009 (74 FR 57804), November 10, 2010 (75 FR 69222), and October 26, 2011 (76 FR 66370) candidate notices of review retained an LPN of 2 for the lesser prairie-chicken.

After making our 12-month finding in 1998, we received several 60-day notices of intent to sue from WildEarth Guardians (formerly Forest Guardians) and several other parties for failure to make expeditious progress toward listing of the lesser prairie-chicken. WildEarth Guardians subsequently filed suit on September 1, 2010, in the U.S. District Court for the District of Colorado.

In 2011, the Service entered into a settlement agreement with WildEarth Guardians that impacted multiple cases nationwide (In re Endangered Species Act Section 4 Deadline Litigation, No. 10–377 (EGS), MDL Docket No. 2165 (D.D.C. May 10, 2011)). As relevant to the lesser prairie-chicken, the agreement

required the Service to submit a proposed listing rule for the lesser prairie-chicken to the **Federal Register** for publication by September 30, 2012.

On September 27, 2012, the settlement agreement was modified to require that the proposed listing rule be submitted to the **Federal Register** on or before November 29, 2012. On December 11, 2012, we published a proposed rule (77 FR 73828) to list the lesser prairie-chicken as a threatened species under the Act (16 U.S.C. 1531 *et seq.*). On May 6, 2013, we announced the publication of a proposed 4(d) rule under the authority of section 4(d) of the Act (78 FR 26302).

On July 9, 2013, we announced a 6-month extension (78 FR 41022) of the final listing determination based on our finding that there was substantial disagreement regarding the sufficiency or accuracy of the available data relevant to our determination regarding the proposed listing rule.

On April 10, 2014, we published a final rule listing the lesser prairie-chicken as a threatened species under the Act (79 FR 19973) and concurrently published a final 4(d) rule for the lesser prairie-chicken (79 FR 20073). However, on September 1, 2015, the final listing rule for the lesser prairie-chicken was vacated by the United States District Court for the Western District of Texas, which also mooted the final 4(d) rule. On July 20, 2016, the Service published in the **Federal Register** a final rule that removed the lesser prairie-chicken from the List of Endangered and Threatened Wildlife in accordance with the court decision (81 FR 47047).

On September 8, 2016, we received a new petition from WildEarth Guardians, Defenders of Wildlife, and Center for Biological Diversity to list the lesser prairie-chicken as endangered throughout its entire range or in three distinct population segments (Molvar 2016, entire). On November 30, 2016, we published a 90-day petition finding that concluded that the petition to list the lesser prairie-chicken provided substantial information that the petitioned action may be warranted (81 FR 86315). On June 12, 2019, the petitioners filed their complaint with the court alleging the Service failed to complete the 12-month petition finding for the lesser prairie-chicken. On September 12, 2019, the Service and the plaintiffs entered into a stipulated settlement agreement that the Service would submit a 12-month petition finding to the **Federal Register** no later than May 26, 2021. This 12-month finding completes the Service's obligations under that settlement agreement.

## Supporting Documents

An SSA team prepared an SSA report for the lesser prairie-chicken. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. The Service sent the SSA report to six independent peer reviewers and received four responses. The Service also sent the SSA report to the five State fish and wildlife agencies within the range of the lesser prairie-chicken (Colorado, Kansas, New Mexico, Oklahoma, and Texas) and the four primary Federal agencies with whom we work to deliver conservation actions that could benefit the lesser prairie-chicken: The Bureau of Land Management (BLM), the Natural Resources Conservation Service (NRCS), Farm Service Agency (FSA), and U.S. Forest Service (USFS). These partners include scientists with expertise in management of either the lesser prairie-chicken or the habitat upon which the lesser prairie-chicken depends. We received responses from USFS, BLM, and all five of the State wildlife agencies. Comments and feedback from partners and peer reviewers were incorporated into the SSA report as appropriate and have informed this proposed rule.

## I. Proposed Listing Determination

### Background

Below is a summary of the taxonomy, life history, and ecology of the lesser prairie-chicken; for a thorough review, please see the SSA report (version 2.2; Service 2021, pp. 5–14).

The lesser prairie-chicken is in the order Galliformes, family Phasianidae, subfamily Tetraoninae; it is generally recognized as a species separate from the greater prairie-chicken (*Tympanuchus cupido pinnatus*) (Jones 1964, pp. 65–73; American Ornithologist's Union 1998, p. 122).

Most lesser prairie-chicken adults live for 2 to 3 years and reproduce in the spring and summer (Service 2021, pp. 10–12). Males congregate on leks during the spring to attract and mate with females (Copelin 1963, p. 26; Hoffman 1963, p. 730; Crawford and Bolen 1975, p. 810; Davis et al. 1979, p. 84; Merchant 1982, p. 41; Haukos 1988, p. 49). Male prairie-chickens tend to exhibit strong breeding site fidelity, often returning to a specific lek many times, even in cases of declining female

attendance and habitat condition (Copelin 1963, pp. 29–30; Hoffman 1963, p. 731; Campbell 1972, pp. 698–699, Hagen et al. 2005, entire, Harju et al. 2010, entire). Females tend to establish nests relatively close to the lek, commonly within 0.6 to 2.4 mi (1 to 4 km) (Copelin 1963, p. 44; Giesen 1994, p. 97), where they incubate 8 to 14 eggs for 24 to 27 days and then raise broods of young throughout the summer (Boal and Haukos 2016, p. 4). Some females will attempt a second nesting if the first nest fails (Johnsgard 1973, pp. 63–64; Merchant 1982, p. 43; Pitman et al. 2006, p. 25). Eggs and young lesser prairie-chickens are susceptible to natural mortality from environmental stress and predation. The appropriate vegetative community and structure is vital to provide cover for nests and young and to provide food resources as broods mature into adults (Suminski 1977, p. 32; Riley 1978, p. 36; Riley et al. 1992, p. 386; Giesen 1998, p. 9). For more detail on habitat needs of the lesser prairie-chicken, please see the SSA report (Service 2021, pp. 9–14).

The lesser prairie-chicken once ranged across the Southern Great Plains of Southeastern Colorado, Southwestern Kansas, Western Oklahoma, the Panhandle and South Plains of Texas, and Eastern New Mexico; currently, it occupies a substantially reduced portion of its presumed historical range (Rodgers 2016, p. 15). Estimates of the potential maximum historical range of the lesser prairie-chicken (e.g., Taylor and Guthery 1980a, p. 1, based on Aldrich 1963, p. 537; Johnsgard 2002, p. 32; Playa Lakes Joint Venture 2007, p. 1) range from about 64–115 million acres (ac) (26–47 million hectares (ha)). The more recent estimate of the historical range of the lesser prairie-chicken encompasses an area of approximately 115 million ac (47 million ha). Presumably, not all of the area within this historical range was evenly occupied by lesser prairie-chicken, and some of the area may not have been suitable to regularly support lesser prairie-chicken populations (Boal and Haukos 2016, p. 6). However, the current range of the lesser prairie-chicken has been significantly reduced from the historical range at the time of European settlement. Estimates as to extent of the loss vary from greater than 90 percent reduction (Hagen and Giesen 2005, unpaginated) to approximately 83 percent reduction (Van Pelt et al. 2013, p. 3).

Lesser prairie-chicken monitoring has been occurring for multiple decades and have included multiple different methodologies. Estimates of population abundance prior to the 1960s are

indeterminable and rely almost entirely on anecdotal information (Boal and Haukos 2016, p. 6). While little is known about precise historical population sizes, the lesser prairie-chicken was reported to be quite common throughout its range in the early 20th century (Bent 1932, pp. 280–281, 283; Baker 1953, p. 8; Bailey and Niedrach 1965, p. 51; Sands 1968, p. 454; Flehardt 1995, pp. 38–44; Robb and Schroeder 2005, p. 13). For example, prior to 1900, as many as two million birds may have existed in Texas alone (Litton 1978, p. 1). Information regarding population size is available starting in the 1960s when the State fish and wildlife agencies began routine lesser prairie-chicken monitoring efforts. However, survey methodology and effort have differed over the decades, making it difficult to precisely estimate trends.

The SSA report and this proposed rule rely on two main population estimates. The two methodologies largely cover different time periods, so we report the results of both throughout this proposed rule in order to give the best possible understanding of lesser prairie-chicken trends both recently and throughout the past decades.

The first of the two studies used historical lek surveys and population reconstruction methods to calculate historical trends and estimate male abundance from 1965 through 2016 (Hagen et al. 2017, pp. 6–9). We have identified concerns in the past with some of the methodologies and assumptions made in this analysis, and others have also noted the challenges of using these data for long-term trends (for example, Zavaleta and Haukos 2013, p. 545; Cummings et al. 2017, pp. 29–30). While these concerns remain, including the very low sample sizes particularly in the 1960s, this work represents the only attempt to compile the extensive historical ground lek count data collected by State agencies to estimate the number of males at both the range-wide and ecoregional scales, and represents the best available data for understanding historical population trends.

Following development of aerial survey methods (McRoberts et al. 2011b, entire), the second summary of lesser prairie-chicken population data uses more statistically rigorous estimates of lesser prairie-chicken abundance (both males and females). This second study uses data from aerial line-transect surveys throughout the range of the lesser prairie-chicken; these results are then extrapolated from the surveyed area to the rest of the range (Nasman et al. 2020, entire). The results of these

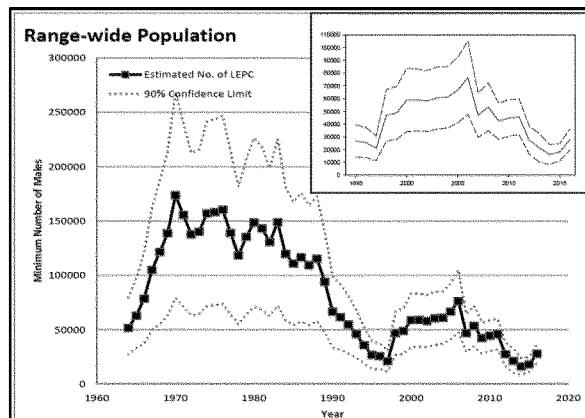
survey efforts should not be taken as precise estimates of the annual lesser prairie-chicken abundance, as indicated by the large confidence intervals. Thus, we caution the reader not to draw conclusions based upon annual fluctuations. Instead, we consider the best use of this data is for long-term trend analysis. Thus, in the SSA Report and this proposed rule, we report the population estimate for the current condition as the average of the past 5 years of surveys.

The results of the study using lek data (abundance of males) indicate that lesser prairie-chicken range-wide abundance (based on a minimum estimated number of male lesser prairie-chicken at leks) peaked from 1965–1970 at a mean estimate of about 175,000 males (Figure 1). The estimated mean population maintained levels of greater than 100,000 males until 1989, after which they steadily declined to a low of 25,000 males in 1997 (Garton *et al.* 2016, p. 68). The mean population

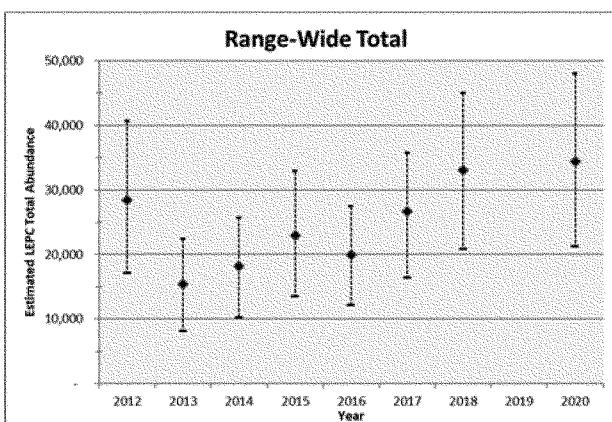
estimates following 1997 peaked again at about 92,000 males in 2006, but subsequently declined to 34,440 males in 2012 (Figure 1).

The aerial survey results from 2012 through 2020 (Figure 2) estimated the lesser prairie-chicken population abundance, averaged over the most recent 5 years of surveys (2015–2020, no surveys in 2019), at 27,384 (90% confidence interval: 15,690, 59,981) (Nasman *et al.* 2020, p. 21; Table 3.3).

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**Figure 1. Estimated range-wide minimum number of Lesser Prairie-Chicken males attending leks 1964–2016 (90% confidence interval).** Based on population reconstruction using 2016 aerial survey as the initial population size (reproduced from Hagen *et al.* 2017).



**Figure 2. Annual estimates of total range-wide population size of lesser prairie-chicken from 2012–2020.** Bars represent the bootstrapped 90% confidence intervals. Graph generated from Nasman *et al.* (2020, Table 12, p. 21). There were no surveys in 2019.

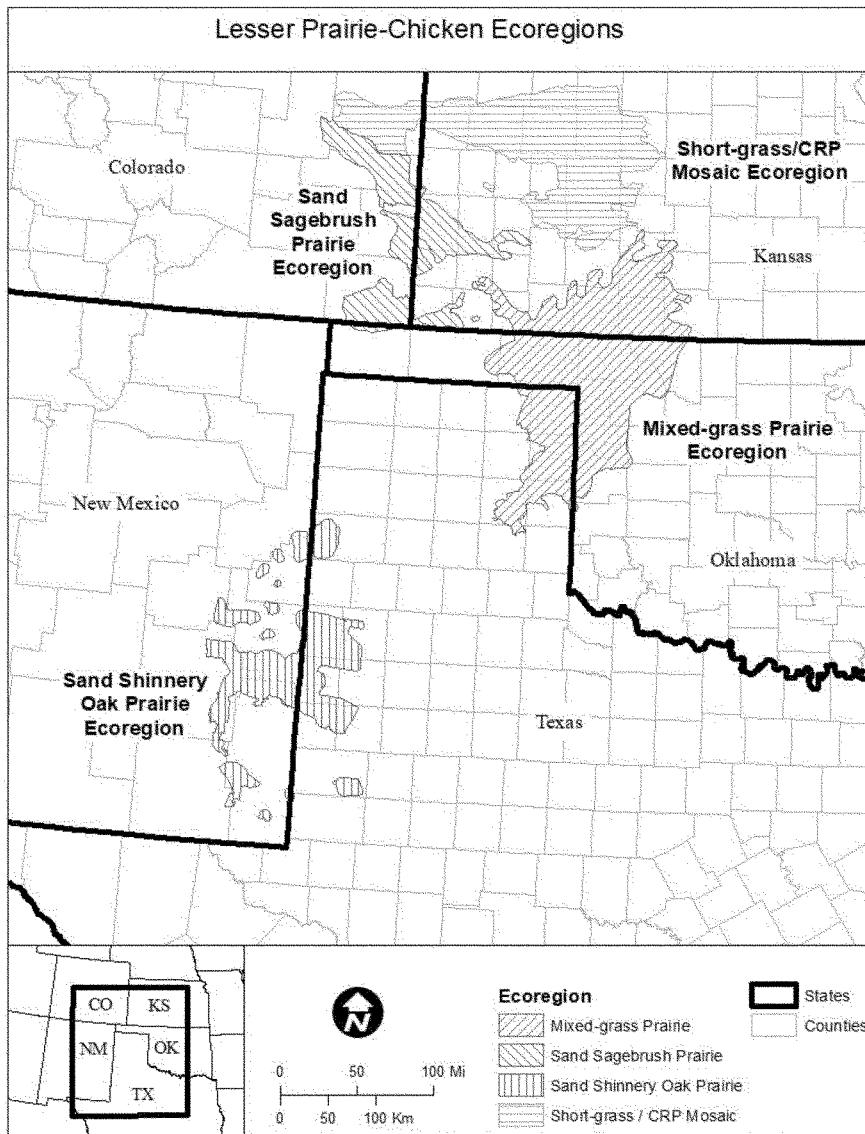
The preferred habitat of the lesser prairie-chicken is mixed-grass prairies and shrublands, with the exception of the Short-Grass/CRP Ecoregion where shrubs play a lesser role. Lesser prairie-chickens appear to select areas having a shrub component dominated by sand sagebrush or sand shinnery oak when those areas are available (Donaldson 1969, pp. 56, 62; Taylor and Guthery 1980a, p. 6; Giesen 1998, pp. 3–4). In the southern and central portions of the lesser prairie-chicken range, small shrubs, such as sand shinnery oak, have been reported to be important for summer shade (Copelin 1963, p. 37; Donaldson 1969, pp. 44–45, 62), winter protection, and as supplemental foods (Johnsgard 1979, p. 112), while in the Short-Grass/CRP Ecoregion, stands of grass that provide adequate vegetative structure likely serve the same roles. The absence of anthropogenic features as well as other vertical structures is important, as lesser prairie-chickens

tend to avoid using areas with trees, vertical structures, and other disturbances in areas with otherwise adequate habitat conditions (Braun *et al.* 2002, pp. 11–13; Pruitt *et al.* 2009, pp. 1256, 1258; Hovick *et al.* 2014a, p. 1685; Boggie *et al.* 2017, entire; Lautenbach 2017, pp. 104–142; Plumb *et al.* 2019, entire).

At the population scale, the most important requirement for the lesser prairie-chicken is having large, intact, ecologically diverse grasslands to complete their life history and maintain healthy populations (Fuhlendorf *et al.* 2017b, entire). Historically, these ecologically diverse grasslands and shrublands were maintained by the occurrence of wildfires (keeping woody vegetation restricted to drainages and rocky outcroppings) and by grazing by bison and other large ungulates. The lesser prairie-chicken is a species that is area-sensitive; that is, it requires large, intact grasslands for functional self-

sustaining populations (Giesen 1998, pp. 3–4; Bidwell *et al.* 2002, pp. 1–3; Hagen *et al.* 2004, pp. 71, 76–77; Haukos and Zavaleta 2016, p. 107).

The lesser prairie-chicken now occurs within four ecoregions (Figure 3); these ecoregions were originally delineated in 2012 as part of the aerial survey designed to monitor long-trends in lesser prairie-chicken populations. Each ecoregion is associated with unique environmental conditions based on habitat and climatic variables and some genetic differentiation (Boal and Haukos 2016, p. 5; Oyler-McCance *et al.* 2016, p. 653). These four ecoregions are the Short-Grass Prairie/CRP Mosaic Ecoregion in Kansas; the Sand Sagebrush Prairie Ecoregion in Colorado, Kansas, and Oklahoma; the Mixed-Grass Prairie Ecoregion in Kansas, Texas, and Oklahoma; and the Sand Shinnery Oak Prairie Ecoregion of New Mexico and Texas.



**Figure 3. The four ecoregions that make up the range of the lesser prairie-chicken; the Sand Shinnery Oak Prairie (Shinnery Oak) Ecoregion, the Sand Sagebrush Prairie (Sand Sagebrush) Ecoregion, the Mixed-Grass Prairie (Mixed-Grass) Ecoregion, and the Short-grass/CRP Mosaic (Short-Grass/CRP) Ecoregion.**

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The Shinnery Oak Ecoregion occupies portions of eastern New Mexico and the South Plains of Texas (McDonald et al. 2012, p. 2). It has a variable vegetation community that contains a mix of shrubs such as sand shinnery oak (*Quercus havardii*) and sand sagebrush (*Artemesia filifolia*) as well as mixed and tall grasses and forbs (Grisham et al. 2016a, p. 317). The mean population estimate ranged between about 5,000 to 12,000 males through 1980, increased to 20,000 males in the mid-1980s and declined to ~1,000 males in 1997 (Hagen et al. 2017 pp. 6–9). The mean

population estimate peaked again to ~15,000 males in 2006 and then declined again to fewer than 3,000 males in the mid-2010s. While population estimates for the Shinnery Oak Ecoregion have varied over recent years, the most recent surveys estimate a 5-year average population size of 3,077 birds (90% confidence intervals (CI): 170, 8,237). Approximately 11 percent of all lesser prairie-chicken occur in this ecoregion (Service 2021, pp. 66–78). Lesser prairie-chicken from the Shinnery Oak Ecoregion are genetically distinct and geographically isolated from the other three ecoregions by 95

miles (mi) (153 kilometers (km)) (Figure 3; Oyler-McCance et al. 2016, p. 653).

With the exception of lesser prairie-chicken areas owned by the State Game Commission and federally owned BLM lands in New Mexico, the majority of the Shinnery Oak Ecoregion is privately owned (Grisham et al. 2016a, p. 315). Nearly all of the area in the Texas portion of the ecoregion is privately owned and managed for agricultural use and petroleum production (Haukos 2011, p. 110). The remaining patches of shinnery oak prairie have become isolated, relict communities because the surrounding grasslands have been

converted to row crop agriculture or fragmented by oil and gas exploration and urban development (Peterson and Boyd 1998, p. 22). Additionally, honey mesquite (*Prosopis glandulosa*) encroachment within this ecoregion has played a significant role in decreasing available space for the lesser prairie-chicken. Technological advances in irrigated row crop agriculture have led to more recent conversion of shinnery oak prairie habitat to row crops in Eastern New Mexico and West Texas (Grisham et al. 2016a, p. 316).

The Sand Sagebrush Ecoregion occurs in Southeast Colorado, Southwest Kansas, and a small portion of Western Oklahoma (McDonald et al. 2012, p. 2). The vegetation community in this area primarily consists of sand sagebrush and the associated mixed and tall grass species that are usually found in the sandier soils adjacent to rivers, streams, and other drainages in the area. Lesser prairie-chicken from the Sand Sagebrush Ecoregion form a distinct genetic cluster from other ecoregions but have likely contributed some individuals to the Short-Grass/CRP Ecoregion through dispersal (Oyler-McCance et al. 2016, p. 653).

Historically, the Sand Sagebrush Ecoregion supported the highest density of lesser prairie-chicken and was considered the core of the lesser prairie-chicken range (Haukos et al. 2016, p. 282). A single flock detected in Seward County, Kansas, was estimated to potentially contain more than 15,000 birds (Bent 1932, p. 281). The population size is estimated to have peaked at more than 85,000 males in the 1970s (Garton et al. 2016, p. 62) and has been in decline since the late 1970s. More recent survey efforts estimate a 5-year average population size of 1,215 birds (90% CI: 196, 4,547). Less than 5 percent of all lesser prairie-chicken occur in this ecoregion (Service 2021, pp. 66–78). Most of the decline has been attributed to habitat deterioration and conversion of sand sagebrush to intensive row crop agriculture due to an increase in center pivot irrigation (Jensen et al. 2000, p. 172).

Environmental conditions in this ecoregion can be extreme, with stochastic events such as blizzards negatively impacting lesser prairie-chicken populations.

The Short-Grass/CRP Ecoregion falls within the mixed- and short-grass prairies of Central and Western Kansas (McDonald et al. 2012, p. 2). As the name implies, much of this ecoregion historically consisted of short-grass prairie interspersed with mixed-grass prairie as well as sand sagebrush prairie along some drainages (Dahlgren et al.

2016, p. 260). By the 1980s, large expanses of prairies had been converted from native grass for crop production in this ecoregion. After the introduction of the CRP in 1985, landowners began to have enhanced incentives to convert croplands to perennial grasslands to provide cover for the prevention of soil erosion. The State of Kansas required those enrolling in the CRP to plant native mixed- and tall-grass species, which is notable because the grasses in this area historically consisted largely of short-grass species, which generally do not provide adequate habitat for the lesser prairie-chicken. For more information on the CRP, see the SSA report (Service 2021, pp. 52–54).

Prior to the late 1990s, lesser prairie-chickens in this ecoregion were thought to be largely absent (or occurred sporadically in low densities) (Hagen and Giesen 2005, unpaginated; Rodgers 1999, p. 19). We do not know what proportion of the eastern Short-Grass/CRP Ecoregion in Kansas was historically occupied by lesser prairie-chicken (Hagen 2003, pp. 3–4), and surveys in this ecoregion only began in earnest in 1999 (Dahlgren et al. 2016, p. 262). The CRP is an idle lands program, which requires establishment of grass cover and precludes tillage or agricultural commodity production for the duration of the contract, and has contractual limits to the type, frequency, and timing of management activities, such as burning, haying, or grazing of the established grasses. As a result of these factors, CRP often provides the vegetative structure preferentially used by lesser prairie-chickens for nesting. In the State of Kansas, the availability of CRP lands, especially CRP lands with interseeded or original seed mixture of forbs, resulted in increased habitat availability for the lesser prairie-chicken and, thus, an expansion of the known lesser prairie-chicken range and an increase in the abundance of the lesser prairie-chicken (Rodgers 1999, pp. 18–19; Fields 2004, pp. 11, 105; Fields et al. 2006, pp. 931, 937; Sullins et al. 2018, p. 1617).

The Short-Grass/CRP Ecoregion is now estimated to contain the majority of lesser prairie-chickens compared to the other ecoregions, with recent survey efforts estimating a 5-year average population size of 16,957 birds (90% CI: 13,605, 35,350), representing approximately 62 percent of the rangewide population (Service 2021, pp. 66–78). Recent genetic studies indicate that lesser prairie-chickens have moved northward largely from the Mixed-Grass Ecoregion and, to a lesser extent, the Sand Sagebrush Ecoregion into the

Short-Grass/CRP Ecoregion (Oyler-McCance et al. 2016, p. 653).

The northern section of this ecoregion is the only portion of the lesser prairie-chicken's range where co-occurrence with greater prairie-chicken occurs. Hybridization rates of up to 5 percent have been reported (Pitman 2013, p. 5), and that rate seemed to be stable across multiple years, though sampling is limited where the species co-occur (Pitman 2013, p. 12). Limited additional work has been completed to further assess the rate of hybridization. There are concerns about the implications of genetic introgression (dilution) of lesser prairie-chicken genes, particularly given that potential effects are poorly understood (Dahlgren et al. 2016, p. 276). Unresolved issues include whether hybridization reduces fitness, alters behavior or morphological traits in either a positive or negative way and the historical occurrence and rate of hybridization.

The Mixed-Grass Ecoregion for the lesser prairie-chicken lies in the northeastern panhandle of Texas, the panhandle of northwestern Oklahoma, and south-central Kansas (McDonald et al. 2012, p. 2). The Mixed-Grass Ecoregion is separated from the Short-Grass/CRP Ecoregion in Kansas by the Arkansas River. The vegetation community in this ecoregion consists largely of a mix of perennial grasses and shrubs such as sand sagebrush, sand plum (*Prunus angustifolia*), yucca (*Yucca* spp.), and sand shinnery oak (Wolfe et al. 2016, p. 300). Based upon population reconstruction data, the mean population estimate was around 30,000 males in the 1970s and 1980s followed by a decline in the 1990s (Hagen et al. 2016, pp. 6–7). The mean population estimate peaked again in the early 2000s at around 25,000 males, before declining to and remaining at its lowest levels, <10,000 males since 2012 (Hagen et al. 2016, pp. 6–7). Although historical population estimates in the ecoregion reported some of the highest densities of lesser prairie-chicken in the range (Wolfe et al. 2016, p. 299), recent aerial survey efforts estimate a 5-year average population size of 6,135 birds (including males and females; 90% CI: 1,719, 11,847). The recent survey work estimates about 22 percent of lesser prairie-chicken occur in this ecoregion (Service 2021, pp. 66–78). Lesser prairie-chicken from the Mixed-Grass Ecoregion are similar in genetic variation with the Short-Grass/CRP Ecoregion, with individuals likely dispersing from the Mixed-Grass Ecoregion to the Short-Grass/CRP Ecoregion (Oyler-McCance et al. 2016, p. 653).

### Distinct Population Segment Evaluation

Under the Act, the term species includes “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” 16 U.S.C. 1532(16). To guide the implementation of the distinct population segment (DPS) provisions of the Act, we and the National Marine Fisheries Service (National Oceanic and Atmospheric Administration—Fisheries), published the Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (DPS Policy) in the **Federal Register** on February 7, 1996 (61 FR 4722). Under our DPS Policy, we use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS: (1) The population segment’s discreteness from the remainder of the species to which it belongs, and (2) the significance of the population segment to the species to which it belongs. If we determine that a population segment being considered for listing is a DPS, then the population segment’s conservation status is evaluated based on the five listing factors established by the Act to determine if listing it as either endangered or threatened is warranted.

As described in Previous Federal Actions, we were petitioned to list the lesser prairie-chicken either rangewide or in three distinct population segments. The petition suggested three DPS configurations: (1) Shinnery Oak Ecoregion, (2) the Sand Sagebrush Ecoregion, and (3) a segment including the Mixed-Grass Ecoregion and the Short-Grass/CRP Ecoregion. The petition also combined the Sand Sagebrush Ecoregion, the Mixed-Grass Ecoregion, and the Short-Grass/CRP Ecoregion due to evidence they are linked genetically and geographically (Molver 2016, p. 18). Genetic studies indicate that lesser prairie-chicken from the Mixed-Grass Ecoregion are similar in genetic variation with the Short-Grass/CRP Ecoregion, with individuals likely dispersing from the Mixed-Grass Ecoregion to the Short-Grass/CRP Ecoregion (Oyler-McCance et al. 2016, p. 653). Other genetic data indicate that lesser prairie-chicken from the Sand Sagebrush Ecoregion and lesser prairie-chicken from the Mixed-Grass and Short-Grass/CRP Ecoregion also share genetic traits. Genetic studies of neutral markers indicate that, although lesser prairie-chicken from the Sand Sagebrush Ecoregion form a distinct genetic cluster from other ecoregions, they have also likely contributed some

individuals to the Short-Grass/CRP Ecoregion through dispersal (Oyler-McCance et al. 2016, p. 653). Additionally, these three ecoregions are not geographically isolated from one another (Figure 3). As a result of the shared genetic characteristics and the geographic connections, we have concluded the Sand Sagebrush Ecoregion, the Mixed-Grass Ecoregion, and the Short-Grass/CRP Ecoregion are appropriately considered as one potential DPS configuration.

Under the Act, we have the authority to consider for listing any species, subspecies, or, for vertebrates, any distinct population segment (DPS) of these taxa if there is sufficient information to indicate that such action may be warranted. We considered whether two segments meet the DPS criteria under the Act: The southernmost ecoregion (Shinnery Oak) and a segment containing the three northernmost ecoregions (Mixed-Grass, Short-Grass/CRP, and Sand Sagebrush).

#### Discreteness

Under our DPS Policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

We conclude the two segments satisfy the “markedly separate” conditions. The two groups of ecoregions are not separated from each other by international governmental boundaries. The southernmost ecoregion (Shinnery Oak) is separated from the three northern ecoregions by approximately 95 mi (153 km), much of which is developed or otherwise unsuitable habitat. There has been no recorded movement of lesser prairie-chickens between the Shinnery Oak Ecoregion and the three northern ecoregions over the past several decades. Because there is no connection between the two parts of the range, there is subsequently no gene flow between them (Oyler-McCance et al. 2016, entire).

Therefore, we have determined that both the southern ecoregion and the northern three ecoregions of the lesser prairie-chicken range both individually

meet the condition for discreteness under our DPS Policy.

#### Significance

Under our DPS Policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs. This consideration may include, but is not limited to: (1) Evidence of the persistence of the discrete population segment in an ecological setting that is unusual or unique for the taxon, (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon, (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range, or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

For the lesser prairie-chicken, we first considered evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. The most recent rangewide genetic study examined neutral markers in the four ecoregions where the lesser prairie-chicken occurs. It concluded that there is significant genetic variation across the lesser prairie-chicken range. The study also concluded that although there is genetic exchange between the three northern ecoregions (particularly movement of birds northward from the Mixed-Grass Ecoregion to the Short-Grass/CRP Ecoregion, and, to a lesser extent, from the Sand Sagebrush Ecoregion into the Short-Grass/CRP Ecoregion), lesser prairie-chicken from the Shinnery Oak Ecoregion in the southwestern part of the range are a group that is genetically distinct from the remainder of the range (Oyler-McCance et al. 2016, p. 653). The Shinnery Oak Ecoregion is more distinct from all three ecoregions in the Northern DPS than those ecoregions are from each other (Oyler-McCance et al. 2016, Table 4). The Shinnery Oak Ecoregion was likely historically connected to the remainder of the range, but the two parts have been separated since approximately the time of European settlement. Therefore, the two segments of the range are genetically distinct from each other.

We next considered evidence that loss of the population segment would result in a significant gap in the range of the taxon. As discussed above, the southwestern and northeastern parts of the range are separated by

approximately 95 mi (153 km). The loss of the Shinnery Oak Ecoregion would result in the loss of the entire southwestern part of the species' range and decrease species redundancy and ecological and genetic representation, thus decreasing its ability to withstand demographic and environmental stochasticity. The loss of the other three ecoregions would result in the loss of 75 percent of the species' range, as well as loss of the part of the range (the Short-Grass/CRP Ecoregion) which has recently experienced a northward expansion of occupied habitat. This would create a large gap in the northeastern portion of the species range, also reducing the species' ability to withstand demographic and environmental stochasticity. Therefore, the loss of either part of the range would result in a significant gap in the range of the lesser prairie-chicken. These genetic differences and the evidence that a significant gap in the range of the taxon would result from the loss of either discrete population segment both individually satisfy the significance

criterion of the DPS Policy. Therefore, under the Service's DPS Policy, we find that both the southern and northern segments of the lesser prairie-chicken are significant to the taxon as a whole.

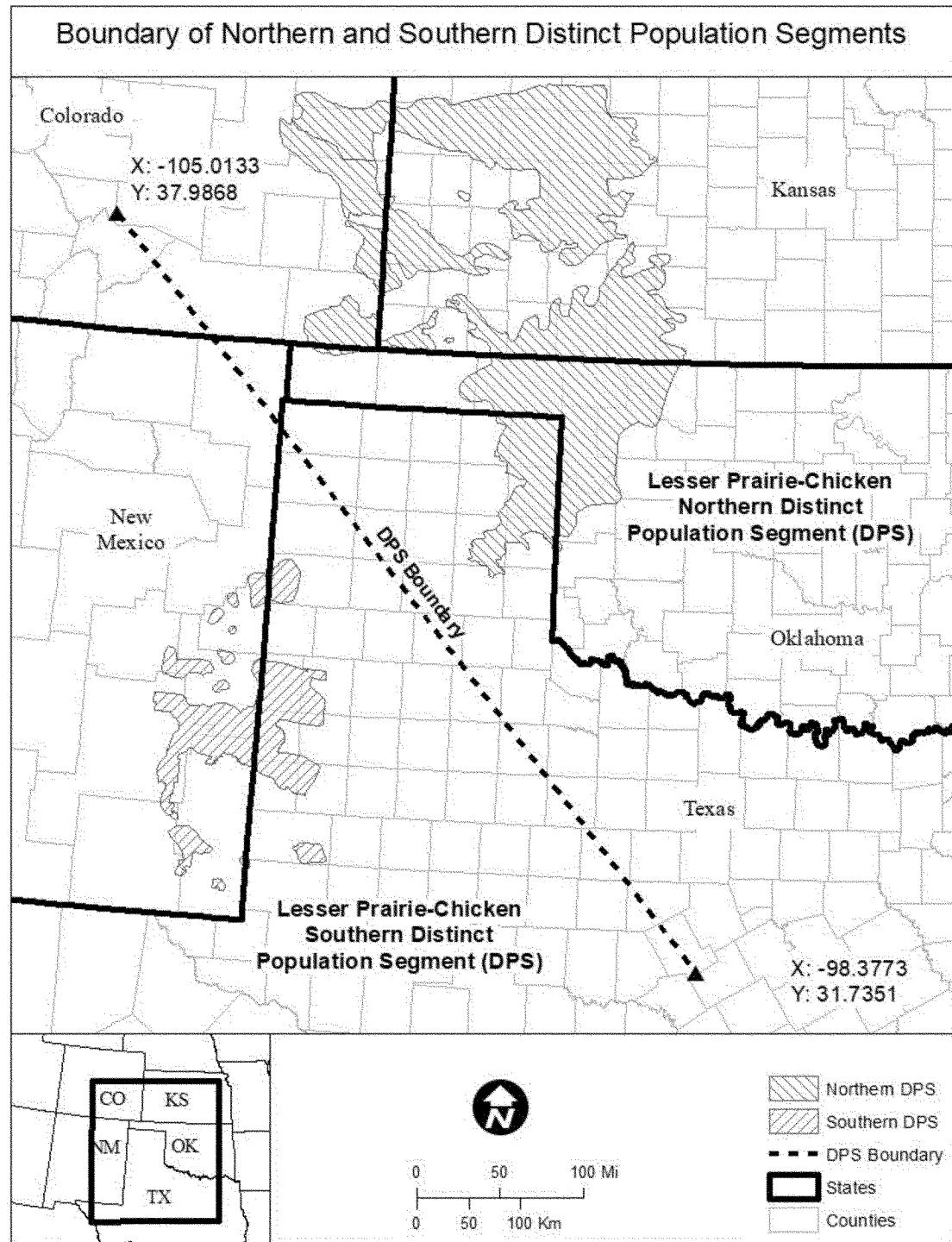
#### Distinct Population Segment Conclusion

Our DPS Policy directs us to evaluate the significance of a discrete population in the context of its biological and ecological significance to the remainder of the species to which it belongs. Based on an analysis of the best available scientific and commercial data, we conclude that the northern and southern parts of the lesser prairie-chicken range are discrete due to geographic (physical) isolation from the remainder of the taxon. Furthermore, we conclude that both parts of the lesser prairie-chicken range are significant, because loss of either part would result in a significant gap in the range of the taxon, and because the two parts of the range are markedly separate based on neutral genetic markers. Therefore, we conclude that both the northern and southern parts of the lesser prairie-chicken range

are both discrete and significant under our DPS Policy and are, therefore, uniquely listable entities under the Act.

Based on our DPS Policy (61 FR 4722; February 7, 1996), if a population segment of a vertebrate species is both discrete and significant relative to the taxon as a whole (*i.e.*, it is a distinct population segment), its evaluation for endangered or threatened status will be based on the Act's definition of those terms and a review of the factors enumerated in section 4(a) of the Act. Having found that both parts of the lesser prairie-chicken range meet the definition of a distinct population segment, we evaluate the status of both the Southern DPS and the Northern DPS of the lesser prairie-chicken to determine whether either meets the definition of an endangered or threatened species under the Act. The line demarcating the break between the Northern and Southern DPS lies approximately half-way between the two DPSs in the unoccupied area between them (Figure 4).

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**Figure 4. The Northern and Southern DPSs of the lesser prairie-chicken. Areas northeast of the dividing line constitute the Northern DPS, while areas southwest of the line constitute the Southern DPS.**

## Regulatory and Analytical Framework

### Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. The Act defines an endangered species as a species that is “in danger of extinction throughout all or a significant portion of its range,” and a threatened species as a species that is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The Act requires that we determine whether any species is an “endangered species” or a “threatened species” because of any of the following factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species’ continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term “threat” to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an “endangered species” or a “threatened species.” In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an

individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an “endangered species” or a “threatened species” only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term “foreseeable future,” which appears in the statutory definition of “threatened species.” Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term “foreseeable future” extends only so far into the future as the Services can reasonably determine that both the future threats and the species’ responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. “Reliable” does not mean “certain”; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species’ likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species’ biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

### Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further

application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found on <http://www.regulations.gov> at Docket FWS-R2-ES-2021-0015.

To assess lesser prairie-chicken viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species’ ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species’ viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species’ life-history needs. The next stage involved an assessment of the historical and current condition of the species’ demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species’ responses to positive and negative environmental and anthropogenic influences that are likely to occur in the future. 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 decision.

The SSA report does not assess the distinct population segments proposed for the species because the SSA focuses on the biological factors, rather than those, such as DPS, that are created by the regulatory framework of the Act. Both the geospatial and threats analysis in the SSA report are summarized by ecoregion. In this proposed rule, we present the analyses per ecoregion from the SSA report but also summarize per DPS as applicable.

### Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

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.

### Representation

To evaluate representation as a component of lesser prairie-chicken viability, we considered the need for multiple healthy lesser prairie-chicken populations within each of the four ecoregions to conserve the genetic and ecological diversity of the lesser prairie-chicken. Each of the four ecoregions varies in terms of vegetative communities and environmental conditions, resulting in differences in abundance and distribution and management strategies (Boal and Haukos 2016, p. 5). Despite reduced range and population size, most lesser prairie-chicken populations appear to have maintained comparatively high levels of neutral genetic variation (DeYoung and Williford 2016, p. 86). As discussed in *Significance* above, recent genetic studies also show significant genetic variation across the lesser prairie-chicken range based on neutral markers (Service 2021, Figure 2.4), which supports management separation of these four ecoregions and highlights important genetic differences between them (Oyler-McCance et al. 2016, p. 653). While it is unknown how this genetic variation relates to differences in adaptive capacity between the

ecoregions, maintaining healthy lesser prairie-chicken populations across this range of diversity increases the likelihood of conserving inherent ecological and genetic variation within the species to enhance its ability for adaptation to future changes in environmental conditions.

### Resiliency

In the case of the lesser prairie-chicken, we considered the primary indicators of resiliency to be habitat availability, population abundance, growth rates, and quasi-extinction risk. Lesser prairie-chicken populations within ecoregions must have sufficient habitat and population growth potential to recover from natural disturbance events such as extensive wildfires, extreme hot or cold events, extreme precipitation events, or extended local periods of below-average rainfall. These events can be particularly devastating to populations when they occur during the late spring or summer when nesting and brood rearing are occurring and individuals are more susceptible to mortality.

The lesser prairie-chicken is considered a "boom-bust" species based on its high reproductive potential with a high degree of annual variation in rates of successful reproduction and recruitment. These variations are largely driven by the influence of seasonal precipitation patterns (Grisham et al. 2013, pp. 6–7), which impact the population through effects on the quality of habitat. Periods of below-average precipitation and higher spring/summer temperatures result in less appropriate grassland vegetation cover and less food available, resulting in decreased reproductive output (bust periods). Periods with above-normal precipitation and cooler spring/summer temperatures will support favorable lesser prairie-chicken habitat conditions and result in high reproductive success (boom periods). In years with particularly poor weather conditions, individual female lesser prairie-chicken may forgo nesting for the year. This population characteristic highlights the need for habitat conditions to support large population growth events during favorable climatic conditions so they can withstand the declines during poor climatic conditions without a high risk of extirpation.

Historically, the lesser prairie-chicken had large expanses of grassland habitat to maintain populations. Early European settlement and development of the Southern Great Plains for agriculture initially, and for energy extraction later, substantially reduced the amount and connectivity of the grasslands of this

region. Additionally, if historically some parts of the range were drastically impacted or eliminated due to a stochastic event, that area could be reestablished from other populations. Today, those characteristics of the grasslands have been degraded, resulting in the loss and fragmentation of grasslands in the Southern Great Plains. Under present conditions, the potential lesser prairie-chicken habitat is limited to small, fragmented grassland patches (relative to historical conditions) (Service 2021, pp. 64–78). The larger and more intact the remaining grassland patches are, with appropriate vegetation structure, the larger, healthier, and more resilient the lesser prairie-chicken populations will be. Exactly how large habitat patches should be to support healthy populations depends on the quality and intactness of the patches. Recommended total space needed for persistence of lesser prairie-chicken populations ranges from a minimum of about 12,000 ac (4,900 ha) (Davis 2005, p. 3) up to more than 50,000 ac (20,000 ha) to support single leks, depending on the quality and intactness of the area (Applegate and Riley 1998, p. 14; Haufler et al. 2012, pp. 7–8; Haukos and Zavaleta 2016, p. 107).

A single lesser prairie-chicken lek is not considered a population that can persist on its own. Instead, complexes of multiple leks that interact with each other are required for a lesser prairie-chicken population to be persistent over time. These metapopulation dynamics, in which individuals interact on the landscape to form larger populations, are dependent upon the specific biotic and abiotic landscape characteristics of the site and how those characteristics influence space use, movement, patch size, and fragmentation (DeYoung and Williford 2016, pp. 89–91). Maintaining multiple, highly resilient populations (complexes of leks) within the four ecoregions that have the ability to interact with each other will increase the probability of persistence in the face of environmental fluctuations and stochastic events. Because of this concept of metapopulations and their influence on long-term persistence, when evaluating lesser prairie-chicken populations, site-specific information can be informative. However, many of the factors affecting lesser prairie-chicken populations should be analyzed at larger spatial scales (Fuhlendorf et al. 2002, entire).

### Redundancy

Redundancy describes the ability of a species to withstand catastrophic events. Catastrophes are stochastic

events that are expected to lead to population collapse regardless of population health and for which adaptation is unlikely. Redundancy spreads the risk and can be measured through the duplication and distribution of resilient populations that are connected across the range of the species. The larger the number of highly resilient populations the lesser prairie-chicken has, distributed over a large area within each ecoregion, the better the species can withstand catastrophic events. Catastrophic events for lesser prairie-chicken might include extreme drought; widespread, extended droughts; or a disease outbreak.

Measuring redundancy for lesser prairie-chicken is a difficult task due to the physiological and biological characteristics of the species, which make it difficult to survey and limit the usefulness of survey results. To estimate redundancy for the lesser prairie-chicken, we estimated the geographic distribution of predicted available habitat within each of the four ecoregions and the juxtaposition of that habitat to other habitat and non-habitat. As the amount of large grassland patches decreases and grassland patches become more isolated to reduce or preclude lesser prairie-chicken movement between them, the overall redundancy of the species is reduced. As redundancy decreases within any representative ecoregion or DPS, the likelihood of extirpation within that ecoregion increases. As large grassland patches, the connectivity of those patches, and the number of lesser prairie-chicken increase, so does the redundancy within an ecoregion or a DPS.

#### Current Condition

In the SSA report, we assessed the current condition of the lesser prairie-chicken through an analysis of existing habitat; a review of factors that have impacted the species in the past, including a geospatial analysis to estimate areas of land cover impacts on the current landscape condition; a summary of the current potential usable area based upon our geospatial analysis; and a summary of past and current population estimates. We also evaluated and summarized the benefit of the extensive conservation efforts that are ongoing throughout the lesser prairie-chicken range to conserve the species and its habitat.

#### Geospatial Analysis Summary

The primary concern for the lesser prairie-chicken is habitat loss and fragmentation. We conducted a geographic information system (GIS)

analysis to analyze the extent of usable land cover changes and fragmentation within the range of the lesser prairie-chicken, characterizing landscape conditions spatially to analyze the ability of those landscapes to support the biological needs of the lesser prairie-chicken. Impacts included in this analysis were the direct and indirect effects of areas that were converted to cropland; encroached by woody vegetation such as mesquite and eastern red cedar (*Juniperus virginiana*); and developed for roads, petroleum production, wind energy, and transmission lines. We acknowledge that there are other impacts, such as power lines or incompatible grazing on the landscape, that can affect lesser prairie-chicken habitat. For those impacts, either no geospatial data were available, or the available data would have added so much complexity to our geospatial model that the results would have been uninterpretable or not explanatory for our purpose.

There are several important limitations to our geospatial analysis. First, it is a landscape-level analysis, so the results only represent broad trends at the ecoregional and rangewide scales. Secondly, this analysis does not incorporate different levels of habitat quality, as the data do not exist at the spatial scale or resolution needed. Our analysis only considers areas as either potentially usable or not usable by lesser prairie-chicken based upon land cover classifications. We recognize that some habitat, if managed as high-quality grassland, may have the ability to support higher densities of lesser prairie-chicken than other habitat that exists at lower qualities. Additionally, we also recognize that some areas of land cover that we identified as suitable could be of such poor quality that it is of limited value to the lesser prairie-chicken. We recognize there are many important limitations to this landscape analysis, including variation and inherent error in the underlying data and unavailable data. We interpreted the results of this analysis with those limitations in mind.

In this proposed rule, we discuss effects that relate to the total potential usable unimpacted acreage for lesser prairie-chicken, as defined by our geospatial analysis (hereafter, analysis area). A complete description of the purpose, methodology, constraints, and additional details for this analysis is provided in the SSA report for the lesser prairie-chicken (Service 2021, Appendix B, Parts 1, 2, and 3).

#### Threats Influencing Current Condition

Following are summary evaluations of the threats analyzed in the SSA report for the lesser prairie-chicken: Effects associated with habitat degradation, loss, and fragmentation, including conversion of grassland to cropland (Factor A), petroleum production (Factor A), wind energy development and transmission (Factor A), woody vegetation encroachment (Factor A), and roads and electrical distribution lines (Factor A); other factors, such as livestock grazing (Factor A), shrub control and eradication (Factor A), collision mortality from fences (Factor E), predation (Factor C), influence of anthropogenic noise (Factor E), fire (Factor A); and extreme weather events (Factor E). We also evaluate existing regulatory mechanisms (Factor D) and ongoing conservation measures.

In the SSA report, we also considered three additional threats: Hunting and other recreational, educational, and scientific use (Factor B); parasites and diseases (Factor C); and insecticides (Factor E). We concluded that, as indicated by the best available scientific and commercial information, these threats are currently having little to no impact on lesser prairie-chickens and their habitat, and thus their overall effect now and into the future is expected to be minimal. Therefore, we will not present summary analyses of those threats in this document but will consider them in our overall conclusions of impacts to the species. For full descriptions of all threats and how they impact the species, please see the SSA report (Service 2021, pp. 24–49).

#### Habitat Degradation, Loss, and Fragmentation

The grasslands of the Great Plains are among the most threatened ecosystems in North America (Samson et al. 2004, p. 6) and have been impacted more than any other major ecosystem on the continent (Samson and Knopf 1994, p. 418). Temperate grasslands are also one of the least conserved ecosystems (Hoekstra et al. 2005, p. 25). Grassland loss in the Great Plains is estimated at approximately 70 percent (Samson et al. 2004, p. 7), with nearly 93,000 square km (23 million ac; 9.3 million ha) of grasslands in the United States lost between 1982 and 1997 alone (Samson et al. 2004, p. 9). The vast majority of the lesser prairie-chicken range (>95 percent) occurs on private lands that have been in some form of agricultural production since at least the early 1900s. As a result, available habitat for grassland species, such as the lesser

prairie-chicken, has been much reduced and fragmented compared to historical conditions across its range.

Habitat impacts occur in three general categories that often work synergistically at the landscape scale: Degradation, loss, and fragmentation. Habitat degradation results in changes to a species' habitat that reduces its suitability to the species, but without making the habitat entirely unsuitable. Degradation may result in lower carrying capacity, lower reproductive potential, higher predation rates, or other effects. Habitat loss may result from the same anthropogenic sources that cause degradation, but the habitat has been altered to the point where it has no suitability for the species at all. Habitat fragmentation occurs when habitat loss is patchy and leaves a matrix of grassland habitat behind. While habitat degradation continues to be a concern, we focus our analysis on habitat loss and fragmentation from the cumulative effects of multiple sources of activities as the long-term drivers of the species' viability.

Initially, reduction in the total area of available habitat may be more significant than fragmentation and can exert a much greater effect on populations (Fahrig 1997, pp. 607, 609). However, as habitat loss continues, the effects of fragmentation often compound effects of habitat loss and produce even greater population declines than habitat loss alone (Bender et al. 1998, pp. 517–518, 525). Spatial habitat fragmentation occurs when some form of disturbance, usually habitat degradation or loss, results in the separation or splitting apart of larger, previously contiguous, functional components of habitat into smaller, often less valuable, noncontiguous patches (Wilcove et al. 1986, p. 237; Johnson and Igl 2001, p. 25; Franklin et al. 2002, entire). Habitat loss and fragmentation influence habitat availability and quality in three primary ways: (1) Total area of available habitat constrains the maximum population size for an area; (2) the size of habitat patches within a larger habitat area, including edge effects (changes in population or community structures that occur at the boundary of two habitats), influences habitat quality and size of local populations; and (3) patch isolation influences the amount of species movement between patches, which constrains demographic and genetic exchange and ability to recolonize local areas where the species might be extirpated (Johnson and Igl 2001, p. 25; Stephens et al. 2003, p. 101).

Habitat loss, fragmentation, and degradation correlate with the

ecological concept of carrying capacity. Within any given block or patch of lesser prairie-chicken habitat, carrying capacity is the maximum number of birds that can be supported indefinitely by the resources available within that area, that is, sufficient food, shelter, and lekking, nesting, brood-rearing, and wintering areas. As habitat loss increases and the size of an area decreases, the maximum number of birds that can inhabit that particular habitat patch also decreases. Consequently, a reduction in the total area of available habitat can negatively influence biologically important characteristics such as the amount of space available for establishing territories and nest sites (Fahrig 1997, p. 603). Over time, the continued conversion and loss of habitat will reduce the capacity of the landscape to support historical population levels, causing a decline in population sizes.

Habitat loss not only contributes to overall declines in usable area for a species but also causes a reduction in the size of individual habitat patches and influences the proximity and connectivity of these patches to other patches of similar habitat (Stephens et al. 2003, p. 101; Fletcher 2005, p. 342), reducing rates of movement between habitat patches until, eventually, complete isolation results. Habitat quality for many species is, in part, a function of patch size and declines as the size of the patch decreases (Franklin et al. 2002, p. 23). Both the size and shape of the habitat patch have been shown to influence population persistence in many species (Fahrig and Merriam 1994, p. 53). The size of the fragment can influence reproductive success, survival, and movements. As the distances between habitat fragments increase, the rate of dispersal between the habitat patches may decrease and ultimately cease, reducing the likelihood of population persistence and potentially leading to both localized and regional extinctions (Harrison and Bruna 1999, p. 226; With et al. 2008, p. 3153). In highly fragmented landscapes, once a species becomes extirpated from an area, the probability of recolonization is greatly reduced (Fahrig and Merriam 1994, p. 52).

For the lesser prairie-chicken, habitat loss can occur due to either direct or indirect habitat impacts. Direct habitat loss is the result of the removal or alteration of grasslands, making that space no longer available for use by the lesser prairie-chicken. Indirect habitat loss and degradation is when the vegetation still exists, but the areas adjacent to a disturbance (the disturbance can be natural or manmade)

are no longer used by lesser prairie-chicken, are used at reduced rates, or the disturbance negatively alters demographic rates or behavior in the affected area. In many cases, as discussed in detail below for specific disturbances, the indirect habitat loss can greatly exceed the direct habitat loss.

Primarily due to their site fidelity and the need for large, ecologically diverse landscapes, lesser prairie-chickens appear to be relatively intolerant to habitat alteration, particularly for activities that fragment habitat into smaller patches. The birds require habitat patches with large expanses of vegetative structure in different successional stages to complete different phases in their life cycle, and the loss or partial loss of even one of these structural components can significantly reduce the overall value of that habitat to lesser prairie-chickens (Elmore et al. 2013, p. 4). In addition to the impacts on the individual patches, as habitat loss and fragmentation increases on the landscape, the juxtaposition of habitat patches to each other and to non-habitat areas will change. This changing pattern on the landscape can be complex and difficult to predict, but the results, in many cases, are increased isolation of individual patches (either due to physical separation or barriers preventing or limiting movement between patches) and direct impacts to metapopulation structure, which could be important for population persistence (DeYoung and Williford 2016, pp. 88–91).

The following sections provide a discussion and quantification of the influence of habitat loss and fragmentation on the grasslands of the Great Plains within the lesser prairie-chicken analysis area and more specifically allow us to characterize the current condition of lesser prairie-chicken habitat.

#### Conversion of Grassland to Cropland

Historical conversion of grassland to cultivated agricultural lands in the late 19th century and throughout the 20th century has been regularly cited as an important cause in the rangewide decline in abundance and distribution of lesser prairie-chicken populations (Copelin 1963, p. 8; Jackson and DeArment 1963, p. 733; Crawford and Bolen 1976a, p. 102; Crawford 1980, p. 2; Taylor and Guthery 1980b, p. 2; Braun et al. 1994, pp. 429, 432–433; Mote et al. 1999, p. 3). Because cultivated grain crops may have provided increased or more dependable winter food supplies for lesser prairie-chickens (Braun et al. 1994, p. 429), the

initial conversion of smaller patches of grassland to cultivation may have been temporarily beneficial to the short-term needs of the species as primitive and inefficient agricultural practices made grain available as a food source (Rodgers 2016, p. 18). However, as conversion increased, it became clear that landscapes having greater than 20 to 37 percent cultivated grains may not support stable lesser prairie-chicken populations (Crawford and Bolen 1976a, p. 102). More recently, abundances of lesser prairie-chicken increased with increasing cropland until a threshold of 10 percent was reached; after that, abundance of lesser prairie-chicken declined with increasing cropland cover (Ross et al. 2016b, entire). While lesser prairie-chicken may forage in agricultural croplands, croplands do not provide for the habitat requirements of the species life cycle (cover for nesting and thermoregulation); thus, lesser prairie-chicken avoid landscapes dominated by cultivated agriculture, particularly where small grains are not the dominant crop (Crawford and Bolen 1976a, p. 102).

As part of the geospatial analysis completed for the SSA, we estimated the amount of cropland that currently exists in the four ecoregions of the lesser prairie-chicken. These percentages do not equate to the actual proportion of habitat loss in the analysis area because not all of the analysis area was necessarily suitable lesser prairie-chicken habitat; they are only the estimated portion of the total analysis area converted from the native vegetation community to cropland. About 37 percent of the total area in the Short-Grass/CRP Ecoregion; 32 percent of the total area in the Sand Sagebrush Ecoregion; 13 percent of the total area in the Mixed-Grass Ecoregion; and 14 percent of the total area in the Shinnery Oak Ecoregion of grassland have been converted to cropland in the analysis area of the lesser prairie-chicken. Rangewide, we estimate about 4,963,000 ac (2,009,000 ha) of grassland have been converted to cropland, representing about 23 percent of the total analysis area. We note that these calculations do not account for all conversion that has occurred within the historical range of the lesser prairie-chicken but are limited to the amount of cropland within our analysis area. For further information, including total acreages impacted, see the SSA report for the lesser prairie-chicken (Service 2021 Appendix E and Figure E.1).

The effects of grassland converted to cropland within the historical range of the lesser prairie-chicken have significantly impacted the amount of

habitat available and how fragmented the remaining habitat is for the lesser prairie-chicken, leading to overall decreases in resiliency and redundancy throughout the range of the lesser prairie-chicken. The impact of cropland has shaped the historical and current condition of the grasslands and shrublands upon which the lesser prairie-chicken depends.

#### Petroleum and Natural Gas Production

Petroleum and natural gas production has occurred over much of the estimated historical and current range of the lesser prairie-chicken. As demand for energy has continued to increase nationwide, so has oil and gas development in the Great Plains. In Texas, for example, active oil and gas wells in the lesser prairie-chicken occupied range have increased by more than 80 percent over the previous decade (Timmer et al. 2014, p. 143). The impacts from oil and gas development extend beyond the immediate well sites; they involve activities such as surface exploration, exploratory drilling, field development, and facility construction, as well as access roads, well pads, and operation and maintenance. Associated facilities can include compressor stations, pumping stations, and electrical generators.

Petroleum and natural gas production result in both direct and indirect habitat effects to the lesser prairie-chicken (Hunt and Best 2004, p. 92). Well pad construction, seismic surveys, access road development, power line construction, pipeline corridors, and other activities can all result in direct habitat loss by removal of vegetation used by lesser prairie-chickens. As documented in other grouse species, indirect habitat loss also occurs from avoidance of vertical structures, noise, and human presence (Weller et al. 2002, entire), which all can influence lesser prairie-chicken behavior in the general vicinity of oil and gas development areas. These activities also disrupt lesser prairie-chicken reproductive behavior (Hunt and Best 2004, p. 41).

Anthropogenic features, such as oil and gas wells, affect the behavior of lesser prairie-chickens and alter the way in which they use the landscape (Hagen et al. 2011, pp. 69–73; Pitman et al. 2005, entire; Hagen 2010, entire; Hunt and Best 2004, pp. 99–104; Plumb et al. 2019, pp. 224–227; Sullins et al. 2019, pp. 5–8; Peterson et al. 2020, entire). Please see the SSA report for a detailed summary of the best available scientific information regarding avoidance distances and effects of oil and gas development on lesser prairie-chicken habitat use (Service 2021, pp. 27–28).

As part of the geospatial analysis discussed in the SSA report, we calculated the amount of usable land cover for the lesser prairie-chicken that has been impacted (both direct and indirect impacts) by oil and natural gas wells in the current analysis area of the lesser prairie-chicken, though this analysis did not include all associated infrastructure as those data were not available. We used an impact radius of 984 ft (300 m) for indirect effects of oil and gas wells. These calculations were limited to the current analysis area and do not include historical impacts of habitat loss that occurred outside of the current analysis area. Thus, the calculation likely underestimates the rangewide effects of historical oil and gas development on the lesser prairie-chicken. About 4 percent of the total area in the Short-Grass/CRP Ecoregion; 5 percent of the total area in the Sand Sagebrush Ecoregion; about 10 percent of the total area in the Mixed-Grass Ecoregion; and 4 percent of the total area in the Shinnery Oak Ecoregion of space that was identified as potential usable or potential restorable areas have been impacted due to oil and gas development in the current analysis area of the lesser prairie-chicken. Rangewide, we estimate about 1,433,000 ac (580,000 ha) of grassland have been lost due to oil and gas development representing about 7 percent of the total analysis area. Maps of these areas in each ecoregion are provided in the SSA report (Service 2021, Appendix E, Figure E.2).

Oil and gas development directly removes habitat that supports lesser prairie-chicken, and the effects of the development extend past the immediate site of the wells and their associated infrastructure, further impacting habitat and altering behavior of lesser prairie-chicken throughout both the Northern and the Southern DPS. These activities have resulted in decreases in population resiliency and species redundancy.

#### Wind Energy Development and Power Lines

Wind power is a form of renewable energy increasingly being used to meet current and projected future electricity demands in the United States. Much of the new wind energy development is likely to come from the Great Plains States because they have high wind resource potential, which exerts a strong, positive influence on the amount of wind energy developed within a particular State (Staid and Guikema 2013, p. 384). In 2019, three of the five States within the lesser prairie-chicken range (Colorado, New Mexico, and Kansas) were within the top 10 States

nationally for fastest growing States for wind generation in the past year (AWEA 2020, p. 33). There is substantial information (Southwest Power Pool 2020) indicating interest by the wind industry in developing wind energy within the range of the lesser prairie-chicken, especially if additional transmission line capacity is constructed. As of May 2020, approximately 1,792 wind turbines were located within the lesser prairie-chicken analysis area (Hoen et al. 2020). Not all areas within the analysis area are habitat for the lesser prairie-chicken, so not all turbines located within the analysis area affect the lesser prairie-chicken and its habitat.

The average size of installed wind turbines and all other size aspects of wind energy development continues to increase (Department of Energy (DOE) 2015, p. 63; AWEA 2020, p. 87–88; AWEA 2014, entire; AWEA 2015, entire; AWEA 2016, entire; AWEA 2017, entire; AWEA 2018, entire; AWEA 2019, entire; AWEA 2020, entire). Wind energy developments range from 20 to 400 towers, each supporting a single turbine. The individual permanent footprint of a single turbine unit, about 0.75–1 ac (0.3–0.4 ha), is relatively small in comparison with the overall footprint of the entire array (DOE 2008, pp. 110–111). Roads are necessary to access the turbine sites for installation and maintenance. Depending on the size of the wind energy development, one or more electrical substations, where the generated electricity is collected and transmitted on to the power grid, may also be built. Considering the initial capital investment and that the service life of a single turbine is at least 20 years (DOE 2008, p. 16), we expect most wind energy developments to be in place for at least 30 years. Repower of existing wind energy developments at the end of their service life is increasingly common, with 2,803 MW of operating projects partially repowering in 2019 (AWEA 2020, p. 2).

Please see the SSA report for a detailed review of the best available scientific information regarding the potential effects of wind energy development on habitat use by the lesser prairie-chicken (Service 2021, pp. 31–33).

Noise effects to prairie-chickens have been recently explored as a way to evaluate potential negative effects of wind energy development. For a site in Nebraska, wind turbine noise frequencies were documented at less than or equal to 0.73 kHz (Raynor et al. 2017, p. 493), and reported to overlap the range of lek-advertisement vocalization frequencies of lesser

prairie-chicken, 0.50–1.0 kHz. Female greater prairie-chickens avoided wooded areas and row crops but showed no response in space use based on wind turbine noise (Raynor et al. 2019, entire). Additionally, differences in background noise and signal-to-noise ratio of boom chorus of leks in relation to distance to turbine have been documented, but the underlying cause and response needs to be further investigated, especially since the study of wind energy development noise on grouse is almost unprecedented (Whalen et al. 2019, entire).

The effects of wind energy development on the lesser prairie-chicken must also take into consideration the influence of the transmission lines critical to distribution of the energy generated by wind turbines. Transmission lines can traverse long distances across the landscape and can be both above ground and underground, although the vast majority of transmission lines are erected above ground. Most of the impacts to lesser prairie-chicken associated with transmission lines are with the above ground systems. Support structures vary in height depending on the size of the line. Most high-voltage power line towers are 98 to 125 ft (30 to 38 m) high but can be higher if the need arises. Local distribution lines, if erected above ground, are usually much shorter in height but still contribute to fragmentation of the landscape.

The effect of the transmission line infrastructure is typically much larger than the physical footprint of transmission line installation. Transmission lines can indirectly lead to alterations in lesser prairie-chicken behavior and space use (avoidance), decreased lek attendance, and increased predation on lesser prairie-chicken. Transmission lines, particularly due to their length, can be a significant barrier to dispersal of prairie grouse, disrupting movements to feeding, breeding, and roosting areas. Both lesser and greater prairie-chickens avoided otherwise usable habitat near transmission lines and crossed these power lines much less often than nearby roads, suggesting that power lines are a particularly strong barrier to movement (Pruett et al. 2009, pp. 1255–1257). Because lesser prairie-chicken avoid tall vertical structures like transmission lines and because transmission lines can increase predation rates, leks located in the vicinity of these structures may see reduced attendance by new males to the lek, as has been reported for sage-grouse (Braun et al. 2002, pp. 11–13). Decreased probabilities of use by lesser prairie-chicken were shown with the

occurrence of more than 0.09 mi (0.15 km) of major roads, or transmission lines within a 1.2-mi (2-km) radius (Sullins et al. 2019, unpagged). Additionally, a recent study corroborated numerous authors' (Pitman et al. 2005; Pruett et al. 2009; Hagen et al. 2011; Grisham et al. 2014; Hovick et al. 2014a) findings of negative effects of power lines on prairie grouse and reported a minimum avoidance distance of 1,925.8 ft (587 m), which is similar to other studies of lesser prairie-chickens (Plumb et al. 2019, entire).

As part of our geospatial analysis, we calculated the amount of otherwise usable land cover for the lesser prairie-chicken that has been impacted (both direct and indirect impacts) by wind energy development in the current analysis area of the lesser prairie-chicken. We used an impact radii of 5,906 ft (1,800 m) for indirect effects of wind turbines and 2,297 ft (700 m) for indirect effects of transmission lines. Within our analysis area, the following acreages have been identified as impacted due to wind energy development: About 2 percent of the total area in the Short-Grass/CRP, Mixed-Grass, and Shinnery Oak Ecoregions; and no impacts of wind energy development documented currently within the Sand Sagebrush Ecoregion. Rangewide, we estimate about 428,000 ac (173,000 ha) of grassland have been impacted by wind energy development, representing about 2 percent of the total analysis area (Service 2021, Appendix E, Figure E.3). These percentages do not account for overlap that may exist with other features that may have already impacted the landscape.

Additionally, according to our geospatial analysis, the following acreages within the analysis area have been directly or indirectly impacted due to the construction of transmission lines: About 7 percent of the total area in the Short-Grass/CRP Ecoregion; 5 percent of the total area in the Sand Sagebrush Ecoregion; 7 percent of the total area in the Mixed-Grass Ecoregion; and 10 percent of the total area in the Shinnery Oak Ecoregion. Rangewide, we estimate about 1,553,000 ac (629,000 ha) of grassland have been impacted by transmission lines representing about 7 percent of the total analysis area (Service 2021, Appendix E, Figure E.4).

Wind energy development and transmission lines remove habitat that supports lesser prairie-chicken. The effects of the development extend past the immediate site of the turbines and their associated infrastructure, further impacting habitat and altering behavior of lesser prairie-chicken throughout

both the Northern and the Southern DPSs. These activities have resulted in decreases in population resiliency and species redundancy.

#### Woody Vegetation Encroachment

As discussed in Background, habitat selected by lesser prairie-chicken is characterized by expansive regions of treeless grasslands interspersed with patches of small shrubs (Giesen 1998, pp. 3–4); lesser prairie-chicken avoid areas with trees and other vertical structures. Prior to extensive Euro-American settlement, frequent fires and grazing by large, native ungulates helped confine trees like eastern red cedar to river and stream drainages and rocky outcroppings. The frequency and intensity of these disturbances directly influenced the ecological processes, biological diversity, and patchiness typical of Great Plains grassland ecosystems (Collins 1992, pp. 2003–2005; Fuhlendorf and Smeins 1999, pp. 732, 737).

Following Euro-American settlement, increasing fire suppression combined with government programs promoting eastern red cedar for windbreaks, erosion control, and wildlife cover facilitated the expansion of eastern red cedar distribution in grassland areas (Owensby et al. 1973, p. 256; DeSantis et al. 2011, p. 1838). Once a grassland area has been colonized by eastern red cedar, the trees are mature within 6 to 7 years and provide a plentiful source of seed so that adjacent areas can readily become infested with eastern red cedar. Despite the relatively short viability of the seeds (typically only one growing season), the large cone crop, potentially large seed dispersal ability, and the physiological adaptations of eastern red cedar to open, relatively dry sites help make the species a successful invader of grassland landscapes (Holthuijzen et al. 1987, p. 1094). Most trees are relatively long-lived and, once they become established in grassland areas, require intensive management to remove to return areas to a grassland state.

Within the southern- and westernmost portions of the estimated historical and occupied ranges of lesser prairie-chicken in Eastern New Mexico, Western Oklahoma, and the South Plains and Panhandle of Texas, honey mesquite is another common woody invader within these grasslands (Riley 1978, p. vii; Boggie et al. 2017, entire). Mesquite is a particularly effective invader in grassland habitat due to its ability to produce abundant, long-lived seeds that can germinate and establish in a variety of soil types and moisture and light regimes (Lautenbach et al. 2017, p. 84). Though not as widespread

as mesquite or eastern red cedar, other tall, woody plants, such as redberry or Pinchot juniper (*Juniperus pinchotii*), black locust (*Robinia pseudoacacia*), Russian olive (*Elaeagnus angustifolia*), and Siberian elm (*Ulmus pumila*) can also be found in grassland habitat historically and currently used by lesser prairie-chicken and may become invasive in these areas.

Invasion of grasslands by opportunistic woody species causes otherwise usable grassland habitat to no longer be used by lesser prairie-chicken and contributes to the loss and fragmentation of grassland habitat (Lautenbach 2017, p. 84; Boggie et al. 2017, p. 74). In Kansas, lesser prairie-chicken are 40 times more likely to use areas that had no trees than areas with 1.6 trees per ac (5 trees per ha), and no nests occur in areas with a tree density greater than 0.8 trees per ac (2 trees per ha), at a scale of 89 ac (36 ha) (Lautenbach 2017, pp. 104–142). Similarly, within the Shinnery Oak Ecoregion, lesser prairie-chicken space use in all seasons is altered in the presence of mesquite, even at densities of less than 5 percent canopy cover (Boggie et al. 2017, entire). Woody vegetation encroachment also contributes to indirect habitat loss and increases habitat fragmentation because lesser prairie-chicken are less likely to use areas adjacent to trees (Boggie et al. 2017, pp. 72–74; Lautenbach 2017, pp. 104–142).

Fire is often the best method to control or preclude tree invasion of grassland. However, to some landowners and land managers, burning of grassland can be perceived as a high-risk activity because of the potential liability of escaped fire impacting nontarget lands and property. Additionally, it is undesirable for optimizing cattle production and is likely to create wind erosion or “blowouts” in sandy soils. Consequently, wildfire suppression is common, and relatively little prescribed burning occurs on private land. Often, prescribed fire is employed only after significant tree invasion has already occurred and landowners consider forage production for cattle to have diminished. Preclusion of woody vegetation encroachment on grasslands of the southern Great Plains using fire requires implementing fire at a frequency that mimics historical fire frequencies of 2–14 years (Guyette et al. 2012, p. 330), further limiting the number of landowners able to implement fire in a manner that would truly preclude future encroachment. Additionally, in areas where grazing pressure is heavy and fuel loads are

reduced, a typical grassland fire may not be intense enough to eradicate eastern red cedar (Briggs et al. 2002a, p. 585; Briggs et al. 2002b, p. 293; Bragg and Hulbert 1976, p. 19) and will not eradicate mesquite.

As part of our geospatial analysis, we calculated the amount of woody vegetation encroachment in the current analysis area of the lesser prairie-chicken. These calculations of the current analysis area do not include historical impacts of habitat loss that occurred outside of the current analysis area; thus, it likely underestimates the effects of historical woody vegetation encroachment rangewide on the lesser prairie-chicken. An additional limitation associated with this calculation is that available remote sensing data lack the ability to detect areas with low densities of encroachment, as well as areas with shorter trees; thus, this calculation likely underestimates lesser prairie-chicken habitat loss due to woody vegetation encroachment. The identified areas of habitat impacted by woody vegetation are: About 5 percent of the total area in the Short-Grass/CRP Ecoregion; about 2 percent of the total area in the Sand Sagebrush Ecoregion; about 24 percent of the total area in the Mixed-Grass Ecoregion; and about 17 percent of the total area in the Shinnery Oak Ecoregion. Rangewide, we estimate about 3,071,000 ac (1,243,000 ha) of grassland have been directly or indirectly impacted by the encroachment of woody vegetation, or about 18 percent of the total area. These percentages do not account for overlap that may exist with other features that may have already impacted the landscape. Further information, including total acres impacted, is available in the SSA report (Service 2021, Appendix B; Appendix E, Figure E.5).

Woody vegetation encroachment is contributing to ongoing habitat loss as well as contributing to fragmentation and degradation of remaining habitat patches. The effects of woody vegetation encroachment are particularly widespread in the Shinnery Oak Ecoregion that makes up the Southern DPS as well as the Mixed-Grass Ecoregion of the Northern DPS. While there are ongoing efforts to control woody vegetation encroachment, the current level of woody vegetation on the landscape is evidence that removal efforts are being outpaced by rates of encroachment, thus we expect that this threat will continue to contribute to habitat loss and fragmentation, which has reduced population resiliency

across the range of the lesser prairie-chicken.

#### Roads and Electrical Distribution Lines

Roads and distribution power lines are linear features on the landscape that contribute to loss and fragmentation of lesser prairie-chicken habitat and fragment populations as a result of behavioral avoidance. Lesser prairie-chickens are less likely to use areas close to roads (Plumb et al. 2019, entire; Sullins et al. 2019, entire). Additionally, roads contribute to lek abandonment when they disrupt important habitat features (such as affecting auditory or visual communication) associated with lek sites (Crawford and Bolen 1976b, p. 239). Some mammal species that prey on lesser prairie-chicken, such as red fox (*Vulpes vulpes*), raccoons (*Procyon lotor*), and striped skunks (*Mephitis mephitis*), have greatly increased their distribution by dispersing along roads (Forman and Alexander 1998, p. 212; Forman 2000, p. 33; Frey and Conover 2006, pp. 1114–1115).

Traffic noise from roads may indirectly impact lesser prairie-chicken. Because lesser prairie-chicken depend on acoustical signals to attract females to leks, noise from roads, oil and gas development, wind turbines, and similar human activity may interfere with mating displays, influencing female attendance at lek sites and causing young males not to be drawn to the leks. Within a relatively short period, leks can become inactive due to a lack of recruitment of new males to the display grounds. For further discussion on noise, please see *Influence of Anthropogenic Noise*.

Depending on the traffic volume and associated disturbances, roads also may limit lesser prairie-chicken dispersal abilities. Lesser prairie-chickens avoid areas of usable habitat near roads (Pruett et al. 2009, pp. 1256, 1258; Plumb et al. 2019, entire) and in areas where road densities are high (Sullins et al. 2019, p. 8). Lesser prairie-chickens are thought to avoid major roads due to disturbance caused by traffic volume and perhaps to avoid exposure to predators that may use roads as travel corridors. However, the extent to which roads constitute a significant obstacle to lesser prairie-chicken movement and space use is largely dependent upon the local landscape composition and characteristics of the road itself.

Local electrical distribution lines are usually much shorter in height than transmission lines but can still contribute to habitat fragmentation through similar mechanisms as other vertical features when erected above ground. Distribution lines are similar to

transmission lines with the exception to height of poles and electrical power carried through the line. In addition to habitat loss and fragmentation, electrical power lines can directly affect prairie grouse by posing a collision hazard (Leopold 1933, p. 353; Connelly et al. 2000, p. 974). There were no datasets available to quantify the total impact of distribution lines on the landscape for the lesser prairie-chicken. Although distribution lines are a significant landscape feature throughout the Great Plains with potential to affect lesser prairie-chicken habitat, after reviewing all available information, we were unable to develop a method to quantitatively incorporate the occurrence of distribution lines into our geospatial analysis.

As part of our geospatial analysis, we estimated the area impacted by direct and indirect habitat loss due to roads (Service 2021, Appendix B, Part 2). These calculations of the current analysis area do not include historical impacts of loss; thus, it likely underestimates the historical effect of roads on rangewide habitat loss for the lesser prairie-chicken. The results indicate that the total areas of grassland that have been directly and indirectly impacted by roads within the analysis area for the lesser prairie-chicken are: about 17 percent of the total area in the Short-Grass/CRP Ecoregion; about 14 percent of the total area in the Sand Sagebrush Ecoregion; about 20 percent of the total area in the Mixed-Grass Ecoregion; and about 19 percent of the total area in the Shinnery Oak Ecoregion. Rangewide, we estimate about 3,996,000 ac (1,617,000 ha) of grassland have been impacted by roads, representing about 18 percent of the total analysis area (Service 2021, Appendix E, Figure E.6). We did not have adequate spatial data to evaluate habitat loss caused solely by power lines, but much of the existing impacts of power lines occur within the impacts caused by roads. Power lines that fall outside the existing impacts of roads would represent additional impacts for the lesser prairie-chicken that are not quantified in our geospatial analysis.

Development of roads and electrical distribution lines directly removes habitat that supports lesser prairie-chicken, and the effects of the development extend past the immediate footprint of the development, further impacting habitat and altering behavior of lesser prairie-chicken throughout both the Northern and the Southern DPSs. These activities have resulted in decreases in population resiliency and species redundancy.

#### Other Factors

##### Livestock Grazing

Grazing has long been an ecological driving force throughout the ecosystems of the Great Plains (Stebbins 1981, p. 84), and much of the untilled grasslands within the range of the lesser prairie-chicken is currently grazed by livestock and other animals. Historically, the interaction of fire, drought, prairie dogs (*Cynomys ludovicianus*), and large ungulate grazers created and maintained distinctive plant communities in the Western Great Plains, resulting in a mosaic of vegetation structure and composition that sustained lesser prairie-chicken and other grassland bird populations (Derner et al. 2009, p. 112). As such, grazing by domestic livestock is not inherently detrimental to lesser prairie-chicken management and, in many cases, is needed to maintain appropriate vegetative structure.

However, grazing practices that tend to result in overutilization of forage and decreasing vegetation heterogeneity can produce habitat conditions that differ in significant ways from the historical grassland mosaic; these incompatible practices alter the vegetation structure and composition and degrade the quality of habitat for the lesser prairie-chicken. The more heavily altered conditions are the least valuable for the lesser prairie-chicken (Jackson and DeArment 1963 p. 733; Davis et al. 1979, pp. 56, 116; Taylor and Guthery 1980a, p. 2; Bidwell and Peoples 1991, pp. 1–2). In some cases, these alterations can result in areas that do not contain the biological components necessary to support the lesser prairie-chicken.

Where grazing regimes leave limited residual cover in the spring, protection of lesser prairie-chicken nests may be inadequate, and desirable food resources can be scarce (Bent 1932, p. 280; Cannon and Knopf 1980, pp. 73–74; Crawford 1980, p. 3; Kraft 2016, pp. 19–21). Because lesser prairie-chicken depend on medium- and tall-grass species for nesting, concealment, and thermal cover that are also preferentially grazed by cattle, these plant species needed by lesser prairie-chicken can easily be reduced or eliminated by cattle grazing, particularly in regions of low rainfall (Hamerstrom and Hamerstrom 1961, p. 290). In addition, when grasslands are in a deteriorated condition due to incompatible grazing and overutilization, the soils have less water-holding capacity (Blanco and Lal 2010, p. 9), and the availability of succulent vegetation and insects used by lesser prairie-chicken chicks is reduced. However, grazing can be beneficial to the lesser prairie-chicken

when management practices produce or enhance the vegetative characteristics required by the lesser prairie-chicken.

The interaction of fire and grazing and its effect on vegetation components and structure is likely important to prairie-chickens (Starns et al. 2020, entire). On properties managed with patch-burn grazing regimes, female greater prairie-chickens selected areas with low cattle stocking rates and patches that were frequently burned, though they avoided areas that were recently burned (Winder et al. 2017, p. 171). Patch-burn grazing created preferred habitats for female greater prairie-chickens if the regime included a relatively frequent fire-return interval, a mosaic of burned and unburned patches, and a reduced stocking rate in unburned areas avoided by grazers. When managed compatibly, widespread implementation of patch-burn grazing could result in significant improvements in habitat quality for wildlife in the tall-grass prairie ecosystem (Winder et al. 2017, p. 165). In the eastern portion of the lesser prairie-chicken range, patch-burn grazing resulted in patchy landscapes with variation in vegetation composition and structure (Lautenbach 2017, p. 20). Female lesser prairie-chickens' use of the diversity of patches in the landscape varied throughout their life cycle. They selected patches with the greatest time-since-fire and subsequently the most visual obstruction for nesting, and they selected sites with less time-since-fire and greater bare ground and forbs for summer brooding.

Livestock also inadvertently flush lesser prairie-chicken and trample lesser prairie-chicken nests (Toole 2005, p. 27; Pitman et al. 2006, pp. 27–29). Brief flushing of adults from nests can expose eggs and chicks to predation and extreme temperatures. Trampling nests can cause direct mortality to lesser prairie-chicken eggs or chicks or may cause adults to permanently abandon their nests, ultimately resulting in loss of young. Although these effects have been documented, the significance of direct livestock effects on the lesser prairie-chicken is largely unknown and is presumed not to be significant at a population scale.

In summary, domestic livestock grazing (including management practices commonly used to benefit livestock production) has altered the composition and structure of grassland habitat, both currently and historically, used by the lesser prairie-chicken. Much of the remaining remnants of mixed-grass grasslands, while still important to the lesser prairie-chicken, exhibit conditions quite different from those

prior to Euro-American settlement. These changes have reduced the suitability of remnant grassland areas as habitat for lesser prairie-chicken. Grazing management that has altered the vegetation community to a point where the composition and structure are no longer suitable for lesser prairie-chicken can contribute to fragmentation within the landscape, even though these areas may remain as prairie or grassland. Livestock grazing, however, is not inherently detrimental to lesser prairie-chicken provided that grazing management results in a plant community diversity and structure that is suitable for lesser prairie-chicken.

While domestic livestock grazing is a dominant land use on untilled range land within the lesser prairie-chicken analysis area, geospatial data do not exist at a scale and resolution necessary to calculate the total amount of livestock grazing that is being managed in a way that results in habitat conditions that are not compatible with the needs of the lesser prairie-chicken. Therefore, we did not attempt to spatially quantify the scope of grazing effects across the lesser prairie-chicken range.

#### Shrub Control and Eradication

Shrub control and eradication are additional forms of habitat alteration that can influence the availability and suitability of habitat for lesser prairie-chicken (Jackson and DeArment 1963, pp. 736–737). Most shrub control and eradication efforts in lesser prairie-chicken habitat are primarily focused on sand shinnery oak for the purpose of increasing forage for livestock grazing. Sand shinnery oak is toxic if eaten by cattle when it first produces leaves in the spring and competes with more palatable grasses and forbs for water and nutrients (Peterson and Boyd 1998, p. 8), which is why it is a common target for control and eradication efforts by rangeland managers. Prior to the late 1990s, approximately 100,000 ac (40,000 ha) of sand shinnery oak in New Mexico and approximately 1,000,000 ac (405,000 ha) of sand shinnery oak in Texas were lost due to the application of tebuthiuron and other herbicides for agriculture and range improvement (Peterson and Boyd 1998, p. 2).

Shrub cover is an important component of lesser prairie-chicken habitat in certain portions of the range, and sand shinnery oak is a key shrub in the Shinnery Oak and portions of the Mixed-Grass Ecoregions. The importance of sand shinnery oak as a component of lesser prairie-chicken habitat in the Shinnery Oak Ecoregion has been demonstrated by several studies (Fuhlendorf et al. 2002, pp. 624–

626; Bell 2005, pp. 15, 19–25). In West Texas and New Mexico, lesser prairie-chicken avoid nesting where sand shinnery oak has been controlled with tebuthiuron, indicating their preference for habitat with a sand shinnery oak component (Grisham et al. 2014, p. 18; Haukos and Smith 1989, p. 625; Johnson et al. 2004, pp. 338–342; Patten and Kelly 2010, p. 2151). Where sand shinnery oak occurs, lesser prairie-chicken use it both for food and cover. Sand shinnery oak may be particularly important in drier portions of the range that experience more severe and frequent droughts and extreme heat events, as sand shinnery oak is more resistant to drought and heat conditions than are most grass species. And because sand shinnery oak is toxic to cattle and thus not targeted by grazing, it can provide available cover for lesser prairie-chicken nesting and brood rearing during these extreme weather events. Loss of this component of the vegetative community likely contributed to observed population declines in lesser prairie-chicken in these areas.

While relatively wide-scale shrub eradication has occurred in the past, geospatial data do not exist to evaluate the extent to which shrub eradication has contributed to the habitat loss and fragmentation for the lesser prairie-chicken and, therefore, was not included in our quantitative analysis. While current efforts of shrub eradication are not likely occurring at rates equivalent to that witnessed in the past, any additional efforts to eradicate shrubs that are essential to lesser prairie-chicken habitat will result in additional habitat degradation and thus reduce redundancy and resiliency.

#### Influence of Anthropogenic Noise

Anthropogenic noise can be associated with almost any form of human activity, and lesser prairie-chicken may exhibit behavioral and physiological responses to the presence of noise. In prairie-chickens, the "boom" call vocalization transmits information about sex, territorial status, mating condition, location, and individual identity of the signaler and thus is important to courtship activity and long-range advertisement of the display ground (Sparling 1981, p. 484). The timing of displays and frequency of vocalizations are critical reproductive behaviors in prairie grouse and appear to have developed in response to unobstructed conditions prevalent in prairie habitat and indicate that effective communication, particularly during the lekking season, operates within a fairly narrow set of acoustic conditions. Prairie grouse usually

initiate displays on the lekking grounds around sunrise, and occasionally near sunset, corresponding with times of decreased wind turbulence and thermal variation (Sparling 1983, p. 41).

Considering the narrow set of acoustic conditions in which communication appears most effective for breeding lesser prairie-chicken and the importance of communication to successful reproduction, human activities that result in noises that disrupt or alter these conditions could result in lek abandonment (Crawford and Bolen 1976b, p. 239).

Anthropogenic features and related activities that occur on the landscape can create noise that exceeds the natural background or ambient level. When the behavioral response to noise is avoidance, as it often is for lesser prairie-chicken, noise can be a source of habitat loss or degradation leading to increased habitat fragmentation.

Anthropogenic noise may be a possible factor in the population declines of other species of lekking grouse in North America, particularly for populations that are exposed to human developments (Blickley et al. 2012a, p. 470; Lipp and Gregory 2018, pp. 369–370). Male greater prairie-chicken adjust aspects of their vocalizations in response to wind turbine noise, and wind turbine noise may have the potential to mask the greater prairie-chicken chorus at 296 hertz (Hz) under certain scenarios, but the extent and degree of masking is uncertain (Whalen 2015, entire). Noise produced by typical oil and gas infrastructure can mask grouse vocalizations, compromise the ability of female sage-grouse to find active leks when such noise is present, and affect nest site selection (Blickley and Patricelli 2012, p. 32; Lipp 2016, p. 40). Chronic noise associated with human activity leads to reduced male and female attendance at noisy leks. Breeding, reproductive success, and ultimately recruitment in areas with human developments could be impaired by such developments, impacting survival (Blickley et al. 2012b, entire). Because opportunities for effective communication on the display ground occur under fairly narrow conditions, disturbance during this period may have negative consequences for reproductive success. Other communications used by grouse off the lek, such as parent-offspring communication, may continue to be susceptible to masking by noise from human infrastructure (Blickley and Patricelli 2012, p. 33).

No data are available to quantify the areas of lesser prairie-chicken habitat rangewide that have been affected by

noise, but noise is a threat that is almost entirely associated with anthropogenic features such as roads or energy development. Therefore, through our accounting for anthropogenic features we may have inherently accounted for all or some of the response of the lesser prairie-chicken to noise produced by those features.

Overall, persistent anthropogenic noise could cause lek attendance to decline, disrupt courtship and breeding activity, and reduce reproductive success. Noise can also cause abandonment of otherwise usable habitat and, as a result, contribute to habitat loss and degradation.

#### Fire

Fire, or its absence, is understood to be a major ecological driver of grasslands in the Southern Great Plains (Anderson 2006, entire; Koerner and Collins 2014, entire; Wright and Bailey 1982, pp. 80–137). Fire is an ecological process important to maintaining grasslands by itself and in coupled interaction with grazing and climate. The interaction of these ecological processes results in increasing grassland heterogeneity through the creation of temporal and spatial diversity in plant community composition and structure and associated response of wildlife (Fuhlendorf and Engle 2001, entire; Fuhlendorf and Engle 2004, entire; Fuhlendorf et al. 2017a, pp. 169–196).

Following settlement of the Great Plains, fire management generally emphasized prevention and suppression, often coupled with grazing pressures that significantly reduced and removed fine fuels (Sayre 2017, pp. 61–70). This approach, occurring in concert with settlement and ownership patterns that occurred in most of the Southern Great Plains, meant that the scale of management was relegated to smaller parcels than historically were affected. This increase in smaller parcels with both intensive grazing and fire suppression resulted in the transformation of landscapes from dynamic heterogeneous to largely static and homogenous plant communities. This simplification of vegetative pattern due to decoupling fire and grazing (Starns et al. 2019, pp. 1–3) changed the number and size of wildfires and ultimately led to declines in biodiversity in the affected systems (Fuhlendorf and Engle 2001, entire).

Changes in patterns of wildfire in the Great Plains have been noted in recent years (Donovan et al. 2017, entire). While these landscapes have a long history of wildfire, large wildfires (greater than 1,000 ac (400 ha)) typically did not occur in recent past decades,

and include an increase in the Southern Great Plains of megafires (greater than 100,000 ac (400 km<sup>2</sup>)) since the mid-1990s (Lindley et al. 2019, p. 164). Changes have occurred throughout all or portions of the Great Plains in number of large wildfires and season of fire occurrence, as well as increased area burned by wildfire or increasing probability of large wildfires (Donovan et al. 2017, p. 5990). Furthermore, Great Plains land cover dominated by woody or woody/grassland combined vegetation is disproportionately more likely to experience large wildfires, with the greatest increase in both number of fires and of area burned (Donovan et al. 2020a, p. 11). Fire behavior has also been affected such that these increasingly large wildfires are burning under weather conditions (Lindley et al. 2019, entire) that result in greater burned extent and intensity. These shifts in fire parameters and their outcomes have potential consequences for lesser prairie-chicken, including: (1) Larger areas of complete loss of nesting habitat as compared to formerly patchy mosaicked burns; and (2) large-scale reduction in the spatial and temporal variation in vegetation structure and composition affecting nesting and brood-rearing habitat, thermoregulatory cover, and predator escape cover.

Effects from fire are expected to be relatively short term (Donovan et al. 2020b, entire, Starns et al. 2020, entire) with plant community recovery time largely predictable and influenced by pre-fire condition, post-fire weather, and types of management. Some effects from fire, however, such as the response to changing plant communities in the range of the lesser prairie-chicken, will vary based on location within the range and available precipitation. In the eastern extent of the distribution of sand shinnery oak that occurs in the Mixed-Grass Ecoregion, fire has potential negative effects on some aspects of the lesser prairie-chicken habitat for 2 years after the area burns, but these effects could be longer in duration dependent upon precipitation patterns (Boyd and Bidwell 2001, pp. 945–946). Effects from fire on lesser prairie-chicken varied based on fire break preparation, season of burn, and type of habitat; positive effects included improved brood habitat through increased forb and grasshopper abundance, but these can be countered by short-term (2-year) negative effects to quality and availability of nesting habitat and a reduction in food sources (Boyd and Bidwell 2001, pp. 945–946). Birds moved into recently burned landscapes of western Oklahoma for lek courtship

displays because of the reduction in structure from formerly dense vegetation (Cannon and Knopf 1979, entire).

More recently, research evaluating indirect effects concluded that prescribed fire and managed grazing following the patch-burn or pyric herbivory (grazing practices shaped fire) approach will benefit lesser prairie-chicken through increases in forbs; invertebrates; and the quality, amount, and juxtaposition of brood habitat to available nesting habitat (Elmore et al. 2017, entire). The importance of temporal and spatial heterogeneity derived from pyric herbivory is apparent in the female lesser prairie-chicken use of all patch types in the patch-burn grazing mosaic, including greater than 2 years post-fire for nesting, 2-year post fire during spring lekking, 1- and 2-year post-fire during summer brooding, and 1-year post-fire during nonbreeding season (Lautenbach 2017, pp. 20–22). While the use of prescribed fire as a tool for managing grasslands throughout the lesser prairie-chicken range is encouraged, current use is at a temporal frequency and spatial extent insufficient to support large amount of lesser prairie-chicken habitat. These fire management efforts are limited to a small number of fire-minded landowners, resulting in effects to a small percentage of the lesser prairie-chicken range.

While lesser prairie-chicken evolved in a fire-adapted landscape, little research (Thacker and Twidwell 2014, entire) has been conducted on response of lesser prairie-chicken to altered fire regimes. Research to date has focused on site-specific responses and consequences. Human suppression of wildfire and the limited extent of fire use (prescribed fire) for management over the past century has altered the frequency, scale, and intensity of fire occurrence in lesser prairie-chicken habitat. These changes in fire parameters have happened simultaneously with habitat loss and fragmentation, resulting in patchy distribution of lesser prairie-chicken throughout their range. An increase in size, intensity, or severity of wildfires as compared to historical occurrences results in increased vulnerability of isolated, smaller lesser prairie-chicken populations. Both woody plant encroachment and drought are additive factors that increase risk of negative consequences of wildfire ignition, as well as extended post-fire lesser prairie-chicken habitat effects. The extent of these negative impacts can be significantly altered by precipitation patterns following the occurrence of the

fire; dry periods will inhibit or extend plant community response.

Historically, fire served an important role in maintenance and quality of habitat for the lesser prairie-chicken. Currently, due to a significant shift in fire regimes in the lesser prairie-chicken range, fire use for management of grasslands plays a locally important but overall limited role in most lesser prairie-chicken habitat. This current lack of prescribed fire use in the range of the lesser prairie-chicken is contributing to woody plant encroachment and degradation of grassland quality due to its decoupling from the grazing and fire interaction that is the foundation for plant community diversity in structure and composition, which in turn supports the diverse habitat needs of lesser prairie-chicken. These cascading effects contribute to greater wildfire risk, and concerns exist regarding the changing patterns of wildfires (scale, intensity, and frequency) and their consequences for remaining lesser prairie-chicken populations and habitat that are increasingly fragmented. Concurrently, wildfire has increased as a threat rangewide due to compounding influences of increased size and severity of wildfires and the potential consequences to remaining isolated and fragmented lesser prairie-chicken populations.

#### Extreme Weather Events

Weather-related events such as drought, snow, and hail storms can influence habitat quality or result in direct mortality of lesser prairie-chickens. Although hail storms typically only have a localized effect, the effects of snow storms and drought can often be more widespread and can affect considerable portions of the lesser prairie-chicken range. Drought is considered a universal ecological driver across the Great Plains (Knopf 1996, p. 147). Annual precipitation within the Great Plains is highly variable (Wiens 1974, p. 391), with prolonged drought capable of causing local extinctions of annual forbs and grasses within stands of perennial species; recolonization is often slow (Tilman and El Haddi 1992, p. 263). Grassland bird species in particular are impacted by climate extremes such as extended drought, which acts as a bottleneck that allows only a limited number of individuals to survive through the relatively harsh conditions (Wiens 1974, pp. 388, 397; Zimmerman 1992, p. 92). Drought also interacts with many of the other threats impacting the lesser prairie-chicken and its habitat, such as amplifying the

effects of incompatible grazing and predation.

Although the lesser prairie-chicken has adapted to drought as a component of its environment, drought and the accompanying harsh, fluctuating conditions (high temperatures and low food and cover availability) have influenced lesser prairie-chicken populations. Widespread periods of drought commonly result in “bust years” of recruitment. Following extreme droughts of the 1930s, 1950s, 1970s, and 1990s, lesser prairie-chicken population levels declined and a decrease in their overall range was observed (Lee 1950, p. 475; Ligon 1953, p. 1; Schwillong 1955, pp. 5–6; Hamerstrom and Hamerstrom 1961, p. 289; Copelin 1963, p. 49; Crawford 1980, pp. 2–5; Massey 2001, pp. 5, 12; Hagen and Giesen 2005, unpaginated). Additionally, lesser prairie-chicken populations reached near record lows during and after the more recent drought of 2011 to 2013 (McDonald et al. 2017, p. 12; Fritts et al. 2018, entire).

Drought impacts prairie grouse, such as lesser prairie-chicken, through several mechanisms. Drought affects seasonal growth of vegetation necessary to provide suitable nesting and roosting cover, food, and opportunity for escape from predators (Copelin 1963, pp. 37, 42; Merchant 1982, pp. 19, 25, 51; Applegate and Riley 1998, p. 15; Peterson and Silvy 1994, p. 228; Morrow et al. 1996, pp. 596–597; Ross et al. 2016a, entire). Lesser prairie-chicken home ranges will temporarily expand during drought years (Copelin 1963, p. 37; Merchant 1982, p. 39) to compensate for scarcity in available resources. During these periods, the adult birds expend more energy searching for food and tend to move into areas with limited cover in order to forage, leaving them more vulnerable to predation and heat stress (Merchant 1982, pp. 34–35; Flanders-Wanner et al. 2004, p. 31). Chick survival and recruitment may also be depressed by drought (Merchant 1982, pp. 43–48; Morrow et al. 1996, p. 597; Giesen 1998, p. 11; Massey 2001, p. 12), which likely affects population trends more than annual changes in adult survival (Hagen 2003, pp. 176–177). Drought-induced mechanisms affecting recruitment include decreased physiological condition of breeding females (Merchant 1982, p. 45); heat stress and water loss of chicks (Merchant 1982, p. 46); and effects to hatch success and juvenile survival due to changes in microclimate, temperature, and humidity (Patten et al. 2005, pp. 1274–1275; Bell 2005, pp. 20–21; Boal et al. 2010, p. 11). Precipitation, or lack thereof, appears to affect lesser

prairie-chicken adult population trends with a potential lag effect (Giesen 2000, p. 145; Ross et al. 2016a, pp. 6–8). That is, rain levels in one year promote more vegetative cover for eggs and chicks in the following year, which influences survival and reproduction.

Although lesser prairie-chicken have persisted through droughts in the past, the effects of such droughts are exacerbated by human land use practices such as incompatible grazing and land cultivation (Merchant 1982, p. 51; Hamerstrom and Hamerstrom 1961, pp. 288–289; Davis et al. 1979, p. 122; Taylor and Guthery 1980a, p. 2; Ross et al. 2016b, pp. 183–186) as well as the other threats that have affected the current condition and have altered and fragmented the landscape and decreased population abundances (Fuhlendorf et al. 2002, p. 617; Rodgers 2016, pp. 15–19). In past decades, fragmentation of lesser prairie-chicken habitat was less extensive than it is today, connectivity between occupied areas was more prevalent, and populations were larger, allowing populations to recover more quickly. In other words, lesser prairie-chicken populations were more resilient to the effects of stochastic events such as drought. As lesser prairie-chicken population abundances decline and usable habitat declines and becomes more fragmented, their ability to rebound from prolonged drought is diminished.

Hail storms can cause mortality of prairie grouse, particularly during the spring nesting season. An excerpt from the May 1879 Stockton News that describes a large hailstorm near Kirwin, Kansas, as responsible for killing prairie-chickens (likely greater prairie-chicken) and other birds by the hundreds (Flehardt 1995, p. 241). Although such phenomena are likely rare, the effects can be significant, particularly if they occur during the nesting period and result in significant loss of eggs or chicks. Severe winter storms can also result in localized impacts to lesser prairie-chicken populations. For example, a severe winter storm in 2006 was reported to reduce lesser prairie-chicken numbers in Colorado by 75 percent from 2006 to 2007, from 296 birds observed to only 74. Active leks also declined from 34 leks in 2006 to 18 leks in 2007 (Verquer 2007, p. 2). While populations commonly rebound to some degree following severe weather events such as drought and winter storms, a population with decreased resiliency becomes susceptible to extirpation from stochastic events.

We are not able to quantify the impact that severe weather has had on the

lesser prairie-chicken populations, but, as discussed above, these events have shaped recent history and influenced the current condition for the lesser prairie-chicken.

#### Regulatory Mechanisms

In Appendix D of the SSA report (Service 2021), we review in more detail the existing regulatory mechanisms (such as local, State, and Federal land use regulations or laws) that may be significant to lesser prairie-chicken conservation. Here, we present a summary of some of those regulatory mechanisms. All existing regulatory mechanisms were fully considered in our conclusion about the status of the two DPSs.

All five States in the estimated occupied range have incorporated the lesser prairie-chicken as a species of conservation concern and management priority in their respective State Wildlife Action Plans. While identification of the lesser prairie-chicken as a species of conservation concern helps heighten public awareness, this designation provides no protection from direct take or habitat destruction or alteration. The lesser prairie-chicken is listed as threatened in Colorado; this listing protects the lesser prairie-chicken from direct purposeful mortality by humans but does not provide protections for destruction or alteration of habitat.

Primary land ownership (approximately 5 percent of total range) at the Federal level is on USFS and BLM lands. The lesser prairie-chicken is present on the Cimarron National Grassland in Kansas and the Comanche National Grassland in Colorado; a total of approximately 3 percent of the total acres estimated in the current condition is on USFS land. The 2014 Lesser Prairie-Chicken Management Plan for these grasslands provides a framework to manage lesser prairie-chicken habitat. The plan provides separate population and habitat recovery goals for each grassland, as well as vegetation surveys to inform ongoing and future monitoring efforts of suitable habitat and lek activities. Because National Grasslands are managed for multiple uses, the plan includes guidelines for prescribed fire and grazing.

In New Mexico, roughly 41 percent of the known historical and most of the estimated occupied lesser prairie-chicken range occurs on BLM land, for a total of 3 percent of the total acres estimated in the current condition. The BLM established the 57,522-ac (23,278-ha) Lesser Prairie-Chicken Habitat Preservation Area of Critical Environmental Concern (ACEC) upon

completion of the Resource Management Plan Amendment (RMPA) in 2008. The management goal for the ACEC is to protect the biological qualities of the area, with emphasis on the preservation of the shinnery oak-dune community to enhance the biodiversity of the ecosystem, particularly habitats for the lesser prairie-chicken and the dunes sagebrush lizard. Upon designation, the ACEC was closed to future oil and gas leasing, and existing leases would be developed in accordance with prescriptions applicable to the Core Management Area as described below (BLM 2008, p. 30). Additional management prescriptions for the ACEC include designation as a right-of-way exclusion area, vegetation management to meet the stated management goal of the area, and limiting the area to existing roads and trails for off-highway vehicle use (BLM 2008, p. 31). All acres of the ACEC have been closed to grazing through relinquishment of the permits except for one 3,442-ac (1,393-ha) allotment.

The BLM's approved RMPA (BLM 2008, pp. 5–31) provides some limited protections for the lesser prairie-chicken in New Mexico by reducing the number of drilling locations, decreasing the size of well pads, reducing the number and length of roads, reducing the number of powerlines and pipelines, and implementing best management practices for development and reclamation. The effect of these best management practices on the status of the lesser prairie-chicken is unknown, particularly considering about 82,000 ac (33,184 ha) have already been leased in those areas (BLM 2008, p. 8). Although the BLM RMPA is an important tool for identifying conservation actions that would benefit lesser prairie-chicken, this program is not adequate to eliminate threats to the species such that is does not warrant listing under the Act.

No new mineral leases will be issued on approximately 32 percent of Federal mineral acreage within the RMPA planning area (BLM 2008, p. 8), although some exceptions are allowed on a case-by-case basis (BLM 2008, pp. 9–11). Within the Core Management Area and Primary Population Area, new leases will be restricted in occupied and suitable habitat; however, if there is an overall increase in reclaimed to disturbed acres over a 5-year period, new leases in these areas will be allowed (BLM 2008, p. 11). In the southernmost habitat management units, where lesser prairie-chickens are now far less common than in previous decades (Hunt and Best 2004), new

leases will not be allowed within 2.4 km (1.5 mi) of a lek (BLM 2008, p. 11).

We conclude that existing regulatory mechanisms have minimal influence on the rangewide trends of lesser prairie-chicken habitat loss and fragmentation because 97 percent of the lesser prairie-chicken analysis area occurs on private lands, and the activities affecting lesser prairie-chicken habitat are largely unregulated land use practices and land development.

#### Conservation Efforts

The SSA report also includes detailed information on current conservation measures (Service 2021, pp. 49–61). Some programs are implemented across the species' range, and others are implemented at the State or local level. Because the vast majority of lesser prairie-chicken and their habitat occurs on private lands, most of these programs are targeted toward voluntary, incentive-based actions in cooperation with private landowners.

At the rangewide scale, plans include the Lesser Prairie-Chicken Rangewide Conservation Plan, the Lesser Prairie-Chicken Initiative, and the Conservation Reserve Program. Below is a summary of the primary rangewide conservation efforts. For detailed descriptions of each program, please see the SSA report. All existing ongoing conservation efforts were fully considered in our finding on the status of the two DPSs.

In 2013, the State fish and wildlife agencies within the range of the lesser prairie-chicken and the Western Association of Fish and Wildlife Agencies (WAFWA) finalized the Lesser Prairie-Chicken Range-wide Conservation Plan (RWP) in response to concerns about threats to lesser prairie-chicken habitat and resulting effects to lesser prairie-chicken populations (Van Pelt et al. 2013, entire). The RWP established biological goals and objectives as well as a conservation targeting strategy that aims to unify conservation efforts towards common goals. Additionally, the RWP establishes a mitigation framework administered by WAFWA that allows industry participants the opportunity to mitigate unavoidable impacts of a particular activity on the lesser prairie-chicken. After approval of the RWP, WAFWA developed a companion oil and gas candidate conservation agreement with assurances (CCAA), which adopted the mitigation framework contained within the RWP that was approved in 2014.

As of August 1, 2020, WAFWA had used incoming funds from industry participants to place 22 sites totaling 128,230 unimpacted ac (51,893 ha) under conservation contracts to provide

offset for industry impacts that have occurred through the RWP and CCAA (Moore 2020, p. 9). These areas are enrolled under RWP conservation contracts that will provide mitigation for 1,538 projects, which impacted 48,743 ac (19,726 ha) (WAFWA 2020, table 32, unpaginated). When enrolling a property, industry participants agree to minimize impacts from projects to lesser prairie-chicken habitat and mitigate for all remaining impacts on the enrolled property. At the end of 2019 in the CCAA, there were 111 active contracts (Certificates of Inclusion) with 6,228,136 ac (2,520,437 ha) enrolled (Moore 2020, p. 4), and in the WAFWA Conservation Agreement there were 52 active WAFWA Conservation Agreement contracts (Certificates of Participation) with 599,626 ac (242,660 ha) enrolled (WAFWA 2020, Table 5 unpaginated). A recent audit of the mitigation program associated with the RWP and CCAA identified several key issues to be resolved within the program to ensure financial stability and effective conservation outcomes (Moore 2020, Appendix E). WAFWA has hired a consultant who is currently working with stakeholders, including the Service, to consider available options to address the identified issues to ensure long-term durability of the strategy.

In 2010, the U.S. Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS) began implementation of the Lesser Prairie-Chicken Initiative (LPCI). The LPCI provides conservation assistance, both technical and financial, to landowners throughout the LPCI's administrative boundary (NRCS 2017, p. 1). The LPCI focuses on maintenance and enhancement of lesser prairie-chicken habitat while benefiting agricultural producers by maintaining the farming and ranching operations throughout the region. In 2019, after annual declines in landowner interest in LPCI, the NRCS made changes in how LPCI will be implemented moving forward and initiated conferencing under section 7 of the ESA with the Service. Prior to 2019, participating landowners had to address all threats to the lesser prairie-chicken present on their property. In the future, each conservation plan developed under LPCI will only need to include one or more of the core management practices that include prescribed grazing, prescribed burning, brush management, and upland wildlife habitat management. Additional management practices may be incorporated into each conservation plan, as needed, to facilitate meeting the desired objectives. These practices are applied or

maintained annually for the life of the practice, typically 1 to 15 years, to treat or manage habitat for lesser prairie-chicken. From 2010 through 2019, NRCS worked with 883 private agricultural producers to implement conservation practices on 1.6 million ac (647,497 ha) of working lands within the historical range of the lesser prairie-chicken (NRCS 2020, p. 2). During that time, through LPCI, NRCS implemented prescribed grazing plans on 680,800 ac (275,500 ha) across the range (Griffiths 2020, pers. comm.). Through LPCI, NRCS has also removed over 41,000 ac (16,600 ha) of eastern red cedar in the Mixed-Grass Ecoregion and chemically treated approximately 106,000 ac (43,000 ha) of mesquite in the Shinnery Oak Ecoregion. Lastly, NRCS has conducted prescribed burns on approximately 15,000 ac (6,000 ha) during this time.

The Conservation Reserve Program (CRP) is administered by the USDA's Farm Service Agency and provides short-term protection and conservation benefits on millions of acres within the range of the lesser prairie-chicken. The CRP is a voluntary program that allows eligible landowners to receive annual rental payments and cost-share assistance in exchange for removing cropland and certain marginal pastureland from agricultural production. CRP contract terms are for 10 to 15 years. The total amount of land that can be enrolled in the CRP is capped nationally by the Food Security Act of 1985, as amended (the 2018 Farm Bill) at 27 million ac (10.93 million ha). All five States within the range of the lesser prairie-chicken have lands enrolled in the CRP. The 2018 Farm Bill maintains the acreage limitation that not more than 25 percent of the cropland in any county can be enrolled in CRP, with specific conditions under which a waiver to this restriction can be provided for lands enrolled under the Conservation Reserve Enhancement Program (84 FR 66813, December 6, 2019). Over time, CRP enrollment fluctuates both nationally and locally. Within the counties that intersect the Estimated Occupied Range plus a 10-mile buffer, acres enrolled in CRP have declined annually since 2007 (with the exception of one minor increase from 2010 to 2011) from nearly 6 million ac (2.4 million ha) enrolled to current enrollment levels of approximately 4.25 million ac (1.7 million ha) (FSA 2020a, unpublished data). More specific to our analysis area, current acreage of CRP enrollment is approximately 1,822,000 ac (737,000 ha) within our analysis area. Of those currently enrolled acres there

are approximately 120,000 ac (49,000 ha) of introduced grasses and legumes dispersed primarily within the Mixed-Grass and Shinnery Oak Ecoregions (FSA 2020b, unpublished data).

At the State level, programs provide direct technical and financial cost-share assistance to private landowners interested in voluntarily implementing conservation management practices to benefit species of greatest conservation need—including the lesser prairie-chicken. Additionally, a variety of State-level conservation efforts acquire and manage lands or incentivize management by private landowners for the benefit of the lesser prairie-chicken. Below is a summary for each State within the range of the lesser prairie-chicken. For a complete description of each, see the SSA report. All conservation measures discussed in the SSA report were fully considered in this proposed rule.

Within the State of Kansas, conservation efforts are administered by the Kansas Department of Wildlife, Parks and Tourism (KDWPT), The Nature Conservancy, and the Service's Partners for Fish and Wildlife Program (PFW). KDWPT has targeted lesser prairie-chicken habitat improvements on private lands by leveraging landowner cost-share contributions, industry and nongovernmental organizations' cash contributions, and agency funds toward several federally funded grant programs. The KDWPT has implemented conservation measures over 22,000 ac (8,900 ha) through the Landowner Incentive Program, over 18,000 ac (7,285 ha) through the State Wildlife Grant Private Landowner Program, 30,000 ac (12,140 ha) through the Wildlife Habitat Incentives Program, and 12,000 ac (4,855 ha) through the Habitat First Program within the range of the lesser prairie-chicken. Additionally, KDWPT was provided an opportunity through contributions from the Comanche Pool Prairie Resource Foundation to leverage additional Wildlife and Sport Fish Restoration funds in 2016 to direct implementation of 19,655 ac (7,954 ha). The Nature Conservancy in Kansas manages the 18,060-ac (7,309-ha) Smoky Valley Ranch. The Nature Conservancy also serves as the easement holder for nearly 34,000 ac (13,760 ha) of properties that are enrolled under the RWP. The Nature Conservancy is also working to use funds from an NRCS Regional Conservation Partnership Program that have resulted in nearly 50,000 ac (20,235 ha) on three ranches either with secured or in-process conservation easements. The Service's PFW program has executed 95 private lands

agreements with direct and indirect improvements on about 173,000 ac (70,011 ha) of private lands benefitting conservation of the lesser prairie-chicken in Kansas.

In 2009, Colorado Parks and Wildlife (CPW) initiated its Lesser Prairie-Chicken Habitat Improvement Program that provides cost-sharing to private landowners who participate in practices such as deferred grazing around active leks, enhancement of fields enrolled in CRP and cropland-to-grassland habitat conversion. Since program inception, CPW has completed 37,051 ac (14,994 ha) of habitat treatments. The Nature Conservancy holds permanent conservation easements on multiple ranches that make up the Big Sandy complex. Totaling approximately 48,940 ac (19,805 ha), this complex is managed with lesser prairie-chicken as a conservation objective and perpetually protects intact sand sagebrush and short-grass prairie communities. The USFS currently manages the Comanche Lesser Prairie-Chicken Habitat Zoological Area, as part of the Comanche and Cimarron National Grasslands, which encompass an area of 10,177 ac (4,118 ha) in Colorado that is managed to benefit the lesser prairie-chicken (USFS 2014, p. 9). In 2016, CPW and KDWPT partnered with Kansas State University and USFS to initiate a 3-year translocation project to restore lesser prairie-chicken to the Comanche National Grasslands (Colorado) and Cimarron National Grasslands (Kansas). Beginning in the fall of 2016 and concluding with the 2019 spring lekking season, the partnership trapped and translocated 411 lesser prairie-chickens from the Short-Grass/CRP Ecoregion in Kansas to the Sand Sagebrush Ecoregion. During April and May 2020 lek counts, Colorado and Kansas biologists and technicians found 115 male birds on 20 active leks in the landscape around the Comanche and Cimarron National Grasslands (Rossi 2020, pers. comm.).

In 2013, the Oklahoma Department of Wildlife Conservation (ODWC) was issued a 25-year enhancement of survival permit pursuant to section 10(a)(1)(A) of the ESA that included an umbrella CCAA between the Service and ODWC for the lesser prairie-chicken in 14 Oklahoma counties (78 FR 14111, March 4, 2013). As of 2019, there were 84 participants with a total of 399,225 ac (161,561 ha) enrolled in the ODWC CCAA, with 357,654 ac (144,737) enrolled as conservation acres (ODWC 2020). The ODWC owns six wildlife management areas totaling approximately 75,000 ac (30,351 ha) in the range of the lesser prairie-chicken,

though only a portion of each wildlife management area can be considered as conservation acres for lesser prairie-chicken. The Service's PFW program has funded a shared position with ODWC for 6 years to conduct CCAA monitoring and, in addition, has provided funding for on-the-ground work in the lesser prairie-chicken range. Since 2017, the Oklahoma PFW program has implemented 51 private lands agreements on about 10,603 ac (4,291 ha) for the benefit of the lesser prairie-chicken in Oklahoma. The Nature Conservancy of Oklahoma manages the 4,050-ac (1,640-ha) Four Canyon Preserve in Ellis County for ecological health to benefit numerous short-grass prairie species, including the lesser prairie-chicken. In 2017, The Nature Conservancy acquired a conservation easement on 1,784 ac (722 ha) in Woods County. The Conservancy is seeking to permanently protect additional acreage in the region through the acquisition of conservation easements.

Texas Parks and Wildlife Department (TPWD) worked with the Service and landowners to develop the first statewide umbrella CCAA for the lesser prairie-chicken in Texas, which was finalized in 2006. The Texas CCAA covers 50 counties, largely encompassing the Texas Panhandle and South Plains regions. Total landowner participation by the close of January 2020 was 91 properties totaling approximately 657,038 ac (265,894 ha) enrolled in 15 counties (TPWD 2020, entire). The Service's PFW program and the TPWD have actively collaborated on range management programs designed to provide cost-sharing for implementation of habitat improvements for lesser prairie-chicken. The Service provided funding to TPWD to support a Landscape Conservation Coordinator position for the Panhandle and Southern High Plains region, as well as funding to support Landowner Incentive Program projects targeting lesser prairie-chicken habitat improvements (brush control and grazing management) in this region. More than \$200,000 of Service funds were committed in 2010, and an additional \$100,000 was committed in 2011.

Since 2008, Texas has addressed lesser prairie-chicken conservation on 14,068 ac (5,693 ha) under the Landowner Incentive Program. Typical conservation measures include native plant restoration, control of exotic or invasive vegetation, prescribed burning, selective brush management, and prescribed grazing. The PFW program in Texas has executed 66 private lands agreements on about 131,190 ac (53,091

ha) of privately owned lands for the benefit of the lesser prairie-chicken in Texas. The Nature Conservancy of Texas acquired approximately 10,635 ac (4,303 ha) in Cochran, Terry, and Yoakum Counties. In 2014, The Nature Conservancy donated this land to TPWD. The TPWD acquired an additional 3,402 ac (1,377 ha) contiguous to the Yoakum Dunes Preserve creating the 14,037-ac (5,681-ha) Yoakum Dunes Wildlife Management Area. In 2015, through the RWP process, WAFWA acquired an additional 1,604 ac (649 ha) in Cochran County, nearly 3 mi (5 km) west of the Yoakum Dunes Wildlife Management Area. The land was deeded to TPWD soon after acquisition. In 2016, an additional 320 ac (129 ha) was purchased by TPWD bordering the WAFWA acquired tract creating an additional 1,924-ac (779-ha) property that is being managed as part of the Yoakum Dunes Wildlife Management Area, now at 15,961 ac (6,459 ha).

The BLM's Special Status Species RMPA, which was approved in April 2008, addressed the concerns and future management of lesser prairie-chicken and dunes sagebrush lizard habitats on BLM lands and established the Lesser Prairie-Chicken Habitat Preservation Area of Critical Environmental Concern (BLM 2008, entire). Since the RMPA was approved in 2008, BLM has closed approximately 300,000 ac (121,000 ha) to future oil and gas leasing and closed approximately 850,000 ac (344,000 ha) to wind and solar development (BLM 2008, p. 3). From 2008 to 2020, they have reclaimed 3,500 ac (1,416 ha) of abandoned well pads and associated roads and required burial of power lines within 2 mi (3.2 km) of lesser prairie-chicken leks. Additionally, BLM has implemented control efforts for mesquite on 832,104 ac (336,740 ha) and has plans to do so on an additional 30,000 ac (12,141 ha) annually. In 2010, BLM acquired 7,440 ac (3,010 ha) of land east of Roswell, New Mexico, to complete the 54,000-ac (21,853-ha) ACEC for lesser prairie-chicken, which is managed to protect key habitat.

Following approval of the RMPA, a candidate conservation agreement (CCA) and CCAA was drafted by a team including the Service, BLM, Center of Excellence for Hazardous Material Management (CEHMM), and participating cooperators to address the conservation needs of the lesser prairie-chicken and the dunes sagebrush lizard.

Since the CCA and CCAA were finalized in 2008, 43 oil and gas companies have enrolled a total of 1,964,163 ac (794,868 ha) in the historical range of the lesser prairie-chicken. In addition, 72 ranchers in New Mexico and the New Mexico Department of Game and Fish have enrolled a total of 2,055,461 ac (831,815 ha). The New Mexico State Land Office has enrolled a total of 406,673 ac (164,575 ha) in the historical range of the lesser prairie-chicken. The CCA and CCAA have treated 79,297 ac (32,090 ha) of mesquite and reclaimed 154 abandoned well pads and associated roads. CEHMM has also removed 7,564 ac (3,061 ha) of dead, standing mesquite, and has another 12,000 ac (5,000 ha) scheduled in the upcoming 2 years.

The Nature Conservancy owns and manages the 28,000-ac (11,331-ha) Milnesand Prairie Preserve near Milnesand, New Mexico. Additionally, the New Mexico Department of Game and Fish has designated 30 Prairie Chicken Areas (PCAs) specifically for management of the lesser prairie-chicken ranging in size from 28 to 7,189 ac (11 to 2,909 ha) and totaling more than 27,262 ac (11,033 ha). In 2007, the State Game Commission used New Mexico State Land Conservation Appropriation funding to acquire 5,285 ac (2,137 ha) of private ranchland in Roosevelt County. The Service's PFW program in New Mexico has contributed financial and technical assistance for restoration and enhancement activities benefitting the lesser prairie-chicken in New Mexico. In 2016, the PFW program executed a private land agreement on 630 ac (255 ha) for treating invasive species with a prescribed burn. In 2020 the PFW program executed a private land agreement for a prescribed burn on 155 ac (63 ha).

#### Conditions and Trends

##### Rangewide Trends

The lesser prairie-chicken estimated historical range encompasses an area of approximately 115 million ac (47 million ha). As discussed in Background, not all of the area within this historical range was evenly occupied by lesser prairie-chicken, and some of the area may not have been suitable to regularly support lesser prairie-chicken populations (Boal and Haukos 2016, p. 6). However, the current range of the lesser prairie-chicken has been significantly reduced from the historical range, and estimates

of the reduction vary from greater than 90 percent (Hagen and Giesen 2005, unpaginated) to approximately 83 percent (Van Pelt et al. 2013, p. 3).

We estimated the current amount and configuration of potential lesser prairie-chicken usable area within the analysis area using the geospatial analysis described in the SSA report (Service 2021, Section 3.2; Appendix B, Parts 1, 2, and 3) and considering existing impacts as described above. The total area of all potential usable (land cover that may be consistent with lesser prairie-chicken areas that have the potential to support lesser prairie-chicken use) and potential usable, unimpacted land cover (that is, not impacted by landscape features) categories in each ecoregion and rangewide is shown in Table 1.

To assess lesser prairie-chicken habitat at a larger scale and incorporate some measure of connectivity and fragmentation, we then grouped the areas of potential usable, unimpacted land cover based on the proximity of other areas with potential usable, unimpacted lesser prairie-chicken land cover. To do this, we used a "nearest neighbor" geospatial process to determine how much potential usable land cover is within 1 mi (1.6 km) of any area of potential usable land cover. This nearest neighbor analysis gives an estimate of how closely potential usable, unimpacted land cover is clustered together, versus spread apart, from other potential usable, unimpacted land cover. Areas with at least 60 percent potential usable, unimpacted land cover within 1 mi (1.6 km) were grouped. The 60 percent threshold was chosen because maintaining grassland in large blocks is vital to conservation of the species (Ross et al. 2016a, entire; Hagen and Elmore 2016, entire; Spencer et al. 2017, entire; Sullins et al. 2019, entire), and these studies indicate that landscapes consisting of greater than 60% grassland are required to support lesser prairie-chicken populations. This approach eliminates small, isolated, and fragmented patches of otherwise potential usable land cover that are not likely to support persistent populations of the lesser prairie-chicken. A separate analysis found that the areas with 60 percent or greater unimpacted potential usable land cover within 1 mile (1.6 km) captured approximately 90 percent of known leks (Service 2021, Appendix B, Part 3).

**TABLE 1—RESULTS OF LESSER PRAIRIE-CHICKEN GEOSPATIAL ANALYSIS BY ECOREGION AND RANGEWIDE, ESTIMATING TOTAL AREA IN ACRES, POTENTIAL USABLE AREA, AND AREA CALCULATED BY OUR NEAREST NEIGHBOR ANALYSIS**  
 [All numbers are in acres. Numbers may not sum due to rounding.]

Ecoregion	Ecoregion total area	Potential usable area	Nearest neighbor analysis	Percent of total area
Short-Grass/CRP .....	6,298,014	2,961,318	1,023,894	16.3
Mixed-Grass .....	8,527,718	6,335,451	994,483	11.7
Sand Sagebrush .....	3,153,420	1,815,435	1,028,523	32.6
Northern DPS total .....	17,979,152	11,112,204	3,046,900	16.9
Shinnery Oak (Southern DPS total) .....	3,850,209	2,626,305	1,023,572	26.6
Rangewide Totals .....	21,829,361	13,738,509	4,070,472	18.6

The results of the nearest neighbor analysis indicate that about 19 percent of the entire analysis area and from 12 percent to 33 percent within each of the four ecoregions is available for use by the lesser prairie-chicken. Due to limitations in data availability and accuracy as well as numerous limitations with the methodology and assumptions made for this analysis, this estimate should not be viewed as a precise measure of the lesser prairie-chicken habitat; instead, it provides a generalized baseline to characterize the current condition and by which we can then forecast the effect of future changes.

In the SSA report, we also considered trends in populations. Estimates of population abundance prior to the 1960s are indeterminable and rely almost entirely on anecdotal information (Boal and Haukos 2016, p. 6). While little is known about precise historical population sizes, the lesser prairie-chicken was reported to be quite common throughout its range in the early 20th century (Bent 1932, pp. 280–281, 283; Baker 1953, p. 8; Bailey and Niedrach 1965, p. 51; Sands 1968, p. 454; Fleharty 1995, pp. 38–44; Robb and Schroeder 2005, p. 13). In the 1960s, State fish and wildlife agencies began routine lesser prairie-chicken monitoring efforts that have largely continued to today.

In the SSA report and this proposed rule, we discuss lesser prairie-chicken population estimates from two studies. The first study calculated historical trends in lesser prairie-chicken abundances from 1965 through 2016 based on population reconstruction methods and historical lek surveys (Hagen et al. 2017, pp. 6–9). The results of these estimates indicate that lesser prairie-chicken rangewide abundance (based on a minimum estimated number of male lesser prairie-chicken) peaked from 1965–1970 at a mean estimate of about 175,000 males. The mean population estimates maintained levels of greater than 100,000 males until 1989, after which they steadily declined to a low of 25,000 males in 1997 (Garton et al. 2016, p. 68). The mean population estimates following 1997 peaked again at about 92,000 males in 2006 but subsequently declined to 34,440 males in 2012. The Service identified concerns in the past with some of the methodologies and assumptions made in this analysis, and the challenges of these data are noted in other studies (for example, Zavaleta and Haukos 2013, p. 545; Cummings et al. 2017, pp. 29–30). While these concerns remain, including the very low sample sizes particularly in the 1960s, this work represents the only attempt to compile the extensive historical ground lek count data collected by State agencies to estimate rangewide population sizes.

Approximate distribution of lek locations as reported by WAFWA for the entire range that were observed occupied by lesser prairie-chicken at least once between 2015 and 2019 are shown in the SSA report (Service 2021, Appendix E, Figure E.7).

Following development of aerial survey methods (McRoberts et al. 2011, entire), more statistically rigorous estimates of lesser prairie-chicken abundance (both males and females) have been conducted by flying aerial line-transect surveys throughout the range of the lesser prairie-chicken and extrapolating densities from the surveyed area to the rest of the range beginning in 2012 (Nasman et al. 2020, entire). The aerial survey results from 2012 through 2020 (Service 2021, Figure 3.2) estimated the lesser prairie-chicken population abundance, averaged over the most recent 5 years of surveys (2015–2020, no surveys in 2019), at 27,384 (90 percent CI: 15,690, 59,981) (Nasman et al. 2020, p. 21; Table 2). The results of these survey efforts should not be taken as precise estimates of the annual lesser prairie-chicken population abundance, as indicated by the large confidence intervals. Thus, the best use of this data is for long-term trend analysis rather than for conclusions based on annual fluctuations. As such, we report the population estimate for the current condition as the average of the past 5 years of surveys.

**TABLE 2—RANGEWIDE AND ECOREGIONAL ESTIMATED LESSER PRAIRIE-CHICKEN TOTAL POPULATION SIZES AVERAGED FROM 2015 TO 2020, LOWER AND UPPER 90 PERCENT CONFIDENCE INTERVALS (CI) OVER THE 5 YEARS OF ESTIMATES, AND PERCENT OF RANGEWIDE TOTALS FOR EACH ECOREGION (FROM NASMAN et al. 2020, P. 21). NO SURVEYS WERE CONDUCTED IN 2019**

Ecoregion	5-Year average estimate	5-Year minimum lower CI	5-Year maximum upper CI	Percent of total
Short-Grass/CRP .....	16,957	13,605	35,350	62
Mixed-Grass .....	6,135	1,719	11,847	22
Sand Sagebrush .....	1,215	196	4,547	4
Shinnery Oak .....	3,077	170	8,237	11

**TABLE 2—RANGEWIDE AND ECOREGIONAL ESTIMATED LESSER PRAIRIE-CHICKEN TOTAL POPULATION SIZES AVERAGED FROM 2015 TO 2020, LOWER AND UPPER 90 PERCENT CONFIDENCE INTERVALS (CI) OVER THE 5 YEARS OF ESTIMATES, AND PERCENT OF RANGEWIDE TOTALS FOR EACH ECOREGION (FROM NASMAN *et al.* 2020, P. 21). NO SURVEYS WERE CONDUCTED IN 2019—Continued**

Ecoregion	5-Year average estimate	5-Year minimum lower CI	5-Year maximum upper CI	Percent of total
Rangewide Totals .....	27,384	15,690	59,981	100

We now discuss habitat impacts and population trends in each ecoregion and DPS throughout the range of the lesser prairie-chicken.

#### Southern DPS

Using our geospatial analysis, we were able to explicitly account for

habitat loss and fragmentation and quantify the current condition of the Shinnery Oak Ecoregion. Of the sources of habitat loss and fragmentation that have occurred, cropland conversion, roads, and encroachment of woody vegetation had the largest impacts on

land cover in the Southern DPS (Table 3). Based on our nearest neighbor analysis, we estimated there are approximately 1,023,572 ac (414,225 ha) or 27 percent of the ecoregion and the Southern DPS potentially available for use by lesser prairie-chicken (Table 1).

**TABLE 3—ESTIMATED AREAS OF CURRENT DIRECT AND INDIRECT IMPACTS, BY IMPACT SOURCE, AND THE PROPORTION OF THE TOTAL AREA OF THE SHINNERY OAK ECOREGION ESTIMATED TO BE IMPACTED (SEE TABLE 1 FOR TOTALS)**

[Impacts are not necessarily cumulative because of overlap of some impacted areas by more than one impact source.]

Shinnery Oak Ecoregion (Southern DPS)		
Impact sources	Acres	Percent of ecoregion
Cropland Conversion .....	540,120	14
Petroleum Production .....	161,652	4
Wind Energy Development .....	90,869	2
Transmission Lines .....	372,577	10
Woody Vegetation Encroachment .....	617,885	16
Roads .....	742,060	19
Total Ecoregion/Southern DPS Area .....	3,850,209	

Based on population reconstruction methods, the mean population estimate ranged between about 5,000 to 12,000 males through 1980, increased to 20,000 males in the mid-1980s and declined to ~1,000 males in 1997 (Hagen *et al.* 2017, pp. 6–9). The mean population estimate peaked again to ~15,000 males in 2006 and then declined again to fewer than 3,000 males in the mid-2010s.

Aerial surveys have been conducted to estimate lesser prairie-chicken population abundance since 2012, and results in the Shinnery Oak Ecoregion from 2012 through 2020 (Service 2021, Figure 3.10) indicate that this ecoregion has the third highest population size (Nasman *et al.* 2020, p. 21) of the four

ecoregions. Average estimates from 2015 to 2020 are 3,077 birds (90 percent CI: 170, 8,237), representing about 11 percent of the rangewide total (Table 2). Recent estimates have varied between fewer than 1,000 birds in 2015 to more than 5,000 birds in 2020 (see also Service 2021, Appendix E, Figure E.7).

#### Northern DPS

Prairies of the Short-Grass/CRP Ecoregion have been significantly altered since European settlement of the Great Plains. Much of these prairies have been converted to other land uses such as cultivated agriculture, roads, power lines, petroleum production, wind energy, and transmission lines.

Some areas have also been altered due to woody vegetation encroachment. Within this ecoregion, it has been estimated that about 73 percent of the landscape has been converted to cropland with 7 percent of the area in CRP (Dahlgren *et al.* 2016, p. 262). According to our GIS analysis, of the sources of habitat loss and fragmentation that have occurred, conversion to cropland has had the single largest impact on land cover in this ecoregion (Table 4). Based on our nearest neighbor analysis, we estimated approximately 1,023,894 ac (414,355 ha), or 16 percent of the ecoregion, is potentially available for use by lesser prairie-chicken (Table 1).

**TABLE 4—ESTIMATED AREAS OF CURRENT DIRECT AND INDIRECT IMPACTS, BY IMPACT SOURCE, AND THE PROPORTION OF THE TOTAL AREA OF THE SHORT-GRASS/CRP ECOREGION ESTIMATED TO BE IMPACTED (SEE TABLE 1 FOR TOTALS)**

[Impacts are not necessarily cumulative because of overlap of some impacted areas by more than one impact source.]

Short-Grass/CRP Ecoregion		
Impact sources	Acres	Percent of ecoregion
Cropland Conversion .....	2,333,660	37
Petroleum Production .....	248,146	4

**TABLE 4—ESTIMATED AREAS OF CURRENT DIRECT AND INDIRECT IMPACTS, BY IMPACT SOURCE, AND THE PROPORTION OF THE TOTAL AREA OF THE SHORT-GRASS/CRP ECOREGION ESTIMATED TO BE IMPACTED (SEE TABLE 1 FOR TOTALS)—Continued**

[Impacts are not necessarily cumulative because of overlap of some impacted areas by more than one impact source.]

Short-Grass/CRP Ecoregion			
Impact sources	Acres	Percent of ecoregion	
Wind Energy Development .....	145,963		2
Transmission Lines .....	436,650		7
Woody Vegetation Encroachment .....	284,175		5
Roads .....	1,075,931		17
<b>Total Ecoregion Area .....</b>	<b>6,298,014</b>		

Based on population reconstruction methods, the mean population estimate for this ecoregion increased from a minimum of about 14,000 males in 2001 and peaked at about 21,000 males in 2011 (Hagen et al. 2017, pp. 8–10; see also Service 2021, Figure 3.3).

Aerial surveys since 2012 indicate that the Short-Grass/CRP Ecoregion (Figure 3.4) has the largest population size (Nasman et al. 2020, p. 21) of the four ecoregions. Average estimates from 2015 to 2020 are 16,957 birds (90 percent CI: 13,605, 35,350), making up

about 62 percent of the rangewide lesser prairie-chicken total (Table 2).

Much of the Mixed-Grass Ecoregion was originally fragmented by homesteading, which subdivided tracts of land into small parcels of 160–320 ac (65–130 ha) in size (Rodgers 2016, p. 17). As a result of these small parcels, road and fence densities are higher compared to other ecoregions and, therefore, increase habitat fragmentation and pose higher risk for collision mortalities than in other ecoregions (Wolfe et al. 2016, p. 302).

Fragmentation has also occurred due to oil and gas development, wind energy development, transmission lines, highways, and expansion of invasive woody plants such as eastern red cedar. A major concern for lesser prairie-chicken populations in this ecoregion is the loss of grassland due to the rapid westward expansion of the eastern red-cedar (NRCS 2016, p. 16). Oklahoma Forestry Services estimated the average rate of expansion of eastern red-cedar in 2002 to be 762 ac (308 ha) per day (Wolfe et al. 2016, p. 302).

**TABLE 5—ESTIMATED AREAS OF CURRENT DIRECT AND INDIRECT IMPACTS, BY IMPACT SOURCE, AND THE PROPORTION (%) OF THE TOTAL AREA OF THE MIXED-GRASS ECOREGION ESTIMATED TO BE IMPACTED (SEE TABLE 1 FOR TOTALS)**

[Impacts are not necessarily cumulative because of overlap of some impacted areas by more than one impact source.]

Mixed-Grass Ecoregion			
Impact sources	Acres	Percent of ecoregion	
Cropland Conversion .....	1,094,688		13
Petroleum Production .....	859,929		10
Wind Energy Development .....	191,571		2
Transmission Lines .....	576,713		7
Woody Vegetation Encroachment .....	2,047,510		24
Roads .....	1,732,050		20
<b>Total Ecoregion Area .....</b>	<b>8,527,718</b>		

Using our geospatial analysis, we were able to explicitly account for habitat loss and fragmentation and quantify the current condition of this ecoregion for the lesser prairie-chicken. Of the sources of habitat loss and fragmentation that have occurred, encroachment of woody vegetation had the largest impact, with conversion to cropland, roads, and petroleum production also having significant impacts on land cover in this ecoregion (Table 5). Based on our nearest neighbor analysis, we estimated there are approximately 994,483 ac (402,453 ha) or 12 percent of the ecoregion, that is potentially available for use by lesser prairie-chicken (Table 1).

The Mixed-Grass Ecoregion historically contained the highest lesser prairie-chicken densities (Wolfe et al. 2016, p. 299). Based on population reconstruction methods, the mean population estimate for this ecoregion in the 1970s and 1980s was around 30,000 males (Hagen et al. 2017, pp. 6–7). Population estimates declined in the 1990s and peaked again in the early 2000s at around 25,000 males, before declining and remaining at its lowest levels, <10,000 males in 2012, since the late 2000s (Hagen et al. 2017, pp. 6–7).

Aerial surveys from 2012 through 2020 (Service 2021, Figure 3.6) indicate this ecoregion has the second highest population size of the four ecoregions

(Nasman et al. 2020, p. 21). Average estimates from 2015 to 2020 are 6,135 birds (90 percent CI: 1,719, 11,847), representing about 22 percent of the rangewide total (Table 2). Results show minimal variation in recent years.

Prairies of the Sand Sagebrush Ecoregion have been influenced by a variety of activities since European settlement of the Great Plains. Much of these grasslands have been converted to other land uses such as cultivated agriculture, roads, power lines, petroleum production, wind energy, and transmission lines. Some areas have also been altered due to woody vegetation encroachment. Only 26 percent of historical sand sagebrush prairie is

available as potential nesting habitat for lesser prairie-chicken (Haukos et al. 2016, p. 285). Using our geospatial analysis, we were able to explicitly account for habitat loss and fragmentation and quantify the current condition of this ecoregion for the lesser prairie-chicken. Of the sources of habitat loss and fragmentation that have

occurred, conversion to cropland has had the single largest impact on land cover in this ecoregion (Table 6). Based on our nearest neighbor analysis, we estimated there are approximately 1,028,523 ac (416,228 ha) or 33 percent of the ecoregion, potentially available for use by lesser prairie-chicken (Table 1). In addition, habitat loss due to the

degradation of the rangeland within this ecoregion continues to be a limiting factor for lesser prairie-chicken, and most of the existing birds within this ecoregion persist primarily on and near CRP lands. Drought conditions in the period 2011–2014 have expedited population decline (Haukos et al. 2016, p. 285).

**TABLE 6—ESTIMATED AREAS OF CURRENT DIRECT AND INDIRECT IMPACTS, BY IMPACT SOURCE, AND THE PROPORTION (%) OF THE TOTAL AREA OF THE SAND SAGEBRUSH ECOREGION ESTIMATED TO BE IMPACTED (SEE TABLE 1 FOR TOTALS)**

[Impacts are not necessarily cumulative because of overlap of some impacted areas by more than one impact source.]

Sand Sagebrush Ecoregion			
Impact sources	Acres	Percent of ecoregion	
Cropland Conversion .....	994,733	32	
Petroleum Production .....	163,704	5	
Wind Energy Development .....	0	0	
Transmission Lines .....	167,240	5	
Woody Vegetation Encroachment .....	68,147	2	
Roads .....	446,316	14	
<b>Total Ecoregion Area .....</b>	<b>3,153,420</b>		

Based on population reconstruction methods, the mean population estimate for this ecoregion peaked at >90,000 males from 1970 to 1975 and declined to its lowest level of fewer than 1,000 males in recent years.

Aerial surveys from 2012 through 2020 indicate that this ecoregion has the lowest population size (Nasman et al. 2020, p. 21) of the four ecoregions. Average estimates from 2015 to 2020 are

1,215 birds (90 percent CI: 196, 4,547) representing about 4 percent of the rangewide lesser prairie-chicken total (Table 2). Recent results have been highly variable, with 2020 being the lowest estimate reported. Although the aerial survey results show 171 birds in this ecoregion in 2020, (with no confidence intervals because the number of detections were too low for statistical analysis), ground surveys in

this ecoregion in Colorado and Kansas detected 406 birds, so we know the current population is actually larger than indicated by the aerial survey results (Rossi and Fricke, pers. comm. 2020, entire).

Table 7 combines the estimated area impacted presented above for each of the three ecoregions into one estimate for each impact source for the Northern DPS.

**TABLE 7—ESTIMATED AREAS OF CURRENT DIRECT AND INDIRECT IMPACTS, BY IMPACT SOURCE, AND THE PROPORTION (%) OF THE TOTAL AREA OF THE NORTHERN DPS ESTIMATED TO BE IMPACTED (SEE TABLE 1 FOR TOTALS)**

[Impacts are not necessarily cumulative because of overlap of some impacted areas by more than one impact source.]

Northern DPS			
Impact sources	Acres	Percent of DPS	
Cropland Conversion .....	4,423,081	25	
Petroleum Production .....	1,271,779	7	
Wind Energy Development .....	337,534	2	
Transmission Lines .....	1,180,603	7	
Woody Vegetation Encroachment .....	2,399,832	13	
Roads .....	3,254,297	18	
<b>Total Northern DPS Area .....</b>	<b>17,979,152</b>		

#### Future Condition

As discussed above, we conducted a geospatial analysis to characterize the current condition of the landscape for the lesser prairie-chicken by categorizing land cover data (into potential usable, potential restoration, or non-usable categories), taking into account exclusion areas and impacts to

remove non-usable areas. We further refined the analysis to account for connectivity by use of our nearest neighbor analysis as described in *Rangewide Trends*. We then used this geospatial framework to analyze the future condition for each ecoregion. To analyze future habitat changes, we accounted for the effects of both future

loss of usable areas and restoration efforts by estimating the rate of change based on future projections (Service 2021, Figure 4.1).

Due to uncertainties associated with both future conservation efforts and impacts, it is not possible to precisely quantify the effect of these future actions on the landscape. Instead, we

established five future scenarios to represent a range of plausible outcomes based upon three plausible levels of conservation (restoration efforts) and three plausible levels of impacts. To account for some of the uncertainty in these projections, we combined the levels of impacts into five different scenarios labeled 1 through 5 (Table 8). Scenario 1 represents the scenario with low levels of future impacts and high levels of future restoration, and Scenario 5 represents the scenario with high impacts and low restoration. Scenario 1 and 5 were used to frame the range of projected outcomes used in our model as they represent the low and high of likely projected outcomes. Scenarios 2, 3, and 4 are model iterations that fall within the range bounded by scenarios 1 and 5 and have continuation of the current level of restoration efforts and vary impacts at low, mid, and high levels, respectively. These scenarios provide a wide range of potential future outcomes to consider in assessing lesser prairie-chicken habitat conditions.

TABLE 8—SCHEMATIC OF FUTURE SCENARIOS FOR LESSER PRAIRIE-CHICKEN CONSERVATION CONSIDERING A RANGE OF FUTURE IMPACTS AND RESTORATION EFFORTS

Scenario	Levels of future change in usable area	
	Restoration	Impacts
1 .....	High .....	Low.
2 .....	Continuation .....	Low.
3 .....	Continuation .....	Mid.
4 .....	Continuation .....	High.
5 .....	Low .....	High.

To project the likely future effects of impacts and conservation efforts to the landscape as described through our land cover model, we quantified the three levels of future habitat restoration and three levels of future impacts within the analysis area by ecoregion on an annual basis. In addition to restoration efforts, we also quantified those efforts that enhance existing habitat. While these enhancement efforts do not increase the amount of available area and thus are not included in the spatial analysis, they are summarized in the SSA report and considered as part of the overall analysis of the biological status of the species. We then extrapolated those results over the next 25 years. We chose 25 years as a period for which we had reasonable confidence in reliably projecting these future changes, and the timeframe corresponds with some of the long-term planning for the lesser prairie-chicken. A complete description of

methodology used to quantify projections of impacts and future conservation efforts is provided in the SSA report (Service 2021, Appendix C).

Quantifying future conservation efforts in terms of habitat restoration allows us to account for the positive impact of those efforts within our analysis by converting areas of land cover that were identified as potential habitat in our current condition model to usable land cover for the lesser prairie-chicken in the future projections. Explicitly quantifying three levels of impacts in the future allows us to account for the effect of these impacts on the lesser prairie-chicken by converting areas identified as usable land cover in our current condition model to nonusable area that will not be available for use by the lesser prairie-chicken in the future.

As we did for the current condition to assess habitat connectivity, after we characterized the projected effects of conservation and impacts on potential future usable areas, we grouped the areas of potential usable, unimpacted land cover on these new future landscape projections using our nearest neighbor analysis (Service 2021, pp. 21–24; Appendix B, Parts 1, 2, and 3). Also, as done for the current condition, we evaluated the frequency of usable area blocks by size in order to evaluate habitat fragmentation and connectivity in the future scenarios (Service 2021, Figure 4.2).

#### Threats Influencing Future Condition

Following are summary evaluations of the expected future condition of threats analyzed in the SSA for the lesser prairie-chicken: Effects associated with habitat degradation, loss, and fragmentation, including conversion of grassland to cropland (Factor A), petroleum production (Factor A), wind energy development and transmission (Factor A), woody vegetation encroachment (Factor A), and roads and electrical distribution lines (Factor A); climate change (Factor A); and other factors, such as livestock grazing (Factor A), shrub control and eradication (Factor A), fire (Factor A); and climate change (Factor E).

In this proposed rule, we do not present summary evaluations of the following threats as we have no information to project future trends, though we do expect them to have some effect on the species in the future: Predation (Factor C), collision mortality from fences (Factor E), and influence of anthropogenic noise (Factor E). We also do not discuss the following threats, as they are having little to no impact on the species and its habitat currently, nor

do we expect them to into the foreseeable future: Hunting and other recreational, educational, and scientific use (Factor B); parasites and diseases (Factor C); and insecticides (Factor E).

For the purposes of this assessment, we consider the foreseeable future to be the amount of time on which we can reasonably determine a likely threat's anticipated trajectory and the anticipated response of the species to those threats. For climate change, the time for which we can reliably project threats and the anticipated response is approximately 60 years. For many other threats impacting the lesser prairie-chicken throughout its range, we consider the time for which we can reliably project threats and the anticipated response to be 25 years. This time period represents our best professional judgment of the foreseeable future conditions related to conversion of grassland to cropland, petroleum production, wind energy, and woody vegetation encroachment, and, as discussed above, is the time period used to project these threats in our geospatial analysis. For this period, we had reasonable confidence in projecting these future changes, and the timeframe corresponds with some of the long-term planning for the lesser prairie-chicken. For other threats and the anticipated species response, we can reliably project impacts and the species response for less than 25 years, such as livestock grazing, roads and electrical distribution lines, shrub control and eradication, and fire.

#### Habitat Loss and Fragmentation

As discussed in “Threats Influencing Current Condition,” habitat loss and fragmentation is the primary concern for lesser prairie-chicken viability. We discuss how each of these activities may contribute to future habitat loss and fragmentation for the lesser prairie-chicken and present the outcomes of the projections.

#### Conversion of Grassland to Cropland

Because much of the lands capable of being used for row crops has already been converted to cultivated agriculture, we do not expect future rates of conversion to reach those witnessed historically; however, conversion has continued to occur (Lark 2020, entire). Rates of future conversion of grasslands to cultivated agriculture in the analysis area will be affected by multiple variables including site-specific biotic and abiotic conditions as well as socioeconomic influences such as governmental agriculture programs, commodity prices, and the economic

benefits of alternative land use practices.

For the purposes of the SSA, we conducted an analysis to project the future rates of conversion of grassland to cropland at three different levels. We used information from aggregated remote sensing data from the USDA Cropland Data layer (Lark 2020, entire;

Service 2021, p. 83). Table 9 outlines the resulting three levels of projected habitat loss of future conversion of grassland to cultivated agriculture per ecoregion over the next 25 years. See the SSA report (Service 2021, Appendix C) for further details and methodologies for these projections. While we do not

expect future rates of conversion (from grassland to cropland) to be equivalent to those we have historically witnessed, the limited amount of large intact grasslands due to the historical extent of conversion means all future impacts are expected to have a disproportionate scale of impact.

**TABLE 9—FUTURE PROJECTION OF THREE LEVELS OF IMPACTED ACRES OF POTENTIAL USABLE AREA FOR THE LESSER PRAIRIE-CHICKEN FROM CONVERSION OF GRASSLAND TO CROPLAND OVER THE NEXT 25 YEARS IN EACH ECOREGION**  
[Numbers may not sum due to rounding.]

Ecoregion	Projected impacts (acres)		
	Low	Intermediate	High
Short-Grass/CRP .....	89,675	145,940	185,418
Mixed-Grass .....	4,220	33,761	50,910
Sand Sagebrush .....	42,573	95,678	142,438
Northern DPS totals .....	136,468	275,379	378,766
Shinnery Oak (Southern DPS) .....	21,985	51,410	93,946
Rangewide Total .....	158,454	326,789	472,712

#### Petroleum Production

In the SSA report, we conducted an analysis to project the future rates of petroleum production at low, intermediate, and high levels. We compiled State well permitting spatial data from each State within each of the ecoregions to inform assumptions around future rates of development (Service 2021, p. 84). We converted the projected number of new wells at the

three levels to acres of usable area impacted. Our analysis accounts for indirect impacts as well as potential overlap with other existing impacts to include colocation efforts by developers. Table 10 represents the extent of potential usable area impacted at the three levels of development per ecoregion over the next 25 years. See the SSA report (Service 2021, Appendix C) for further details and methodologies regarding these projections.

Given current trends in energy production, we anticipate that oil and gas production across the lesser prairie-chicken range will continue to occur and that rates will vary both temporally and spatially. The rates of development will be dependent upon new exploration, advancements in technology, and socioeconomic dynamics that will influence energy markets in the future.

**TABLE 10—FUTURE PROJECTION OF THREE LEVELS OF IMPACTED ACRES (INCLUDING BOTH DIRECT AND INDIRECT EFFECTS) OF POTENTIAL USABLE AREA FOR THE LESSER PRAIRIE-CHICKEN FROM OIL AND GAS DEVELOPMENT OVER THE NEXT 25 YEARS IN EACH ECOREGION**  
[Numbers may not sum due to rounding.]

Ecoregion	Projected impacts (acres)		
	Low	Intermediate	High
Short-Grass/CRP .....	26,848	54,618	82,388
Mixed-Grass .....	82,716	170,989	259,262
Sand Sagebrush .....	3,166	9,054	14,942
Northern DPS totals .....	112,730	234,661	356,592
Shinnery Oak (Southern DPS) .....	136,539	190,144	243,749
Rangewide Total .....	249,269	424,805	600,342

#### Wind Energy Development and Transmission Lines

As discussed in “Threats Influencing Current Condition,” the States in the lesser prairie-chicken analysis area have experienced some of the largest growth in wind energy development in the nation. Identification of the actual

number of proposed wind energy projects that will be built within the range of the lesser prairie-chicken in any future timeframe is difficult to accurately discern. We conducted an analysis of current and potential future wind energy development for the SSA for the Lesser Prairie-Chicken, and the

future development was estimated at three different levels within the analysis area of the lesser prairie-chicken at low, intermediate, and high levels (Service 2021, Appendix C). Table 11 represents the wind development projects projected at three levels of development per ecoregion.

TABLE 11—PROJECTIONS OF FUTURE WIND ENERGY DEVELOPMENT PROJECTS FOR THE NEXT 25 YEARS AT THREE LEVELS IN EACH LESSER PRAIRIE-CHICKEN ECOREGION AND RANGEWIDE

Ecoregion	Projected wind developments		
	Low	Intermediate	High
Short-Grass/CRP .....	7	11	16
Mixed-Grass .....	10	18	25
Sand Sagebrush .....	1	2	3
Northern DPS totals .....	18	31	44
Shinnery Oak (Southern DPS) .....	4	7	10
Rangewide Total .....	22	38	54

As outlined within “Threats Influencing Current Condition,” wind energy development also has indirect impacts on the lesser prairie-chicken. To determine the number of acres impacted by wind energy development in the current condition, we analyzed wind energy facilities recently constructed within and near our analysis area. We applied a 5,900-ft (1,800-m) impact radius to individual turbines to account for indirect impacts and found that the last 5 years show a substantial increase in the relative density of wind energy projects (see

Service 2021, Appendix C, for further details). This analysis does not mean that all of the impacts occur to otherwise usable lesser prairie-chicken land cover. In fact, it is highly unlikely due to viable wind development potential outside lesser prairie-chicken usable areas that all projected impacts will occur in areas that are otherwise usable for the lesser prairie-chicken. Because we cannot predict the precise location of future developments and to simplify and facilitate modeling the locations for future projections for wind development, we created a potential

wind energy development grid that was laid over the analysis area and which allowed the random placement for each development for each iteration (Service 2021, p. 86). The resulting projected impacts in 25 years using the median iteration for each of the range of future scenarios are shown in Table 12. Scenarios 1 and 5 were used to frame the scenarios used in our model as they represent the low and high of likely projected outcomes. The rangewide projections range from 164,100 ac (66,400 ha) to 328,000 ac (133,000 ha).

TABLE 12—RANGE OF PROJECTIONS OF FUTURE WIND ENERGY DEVELOPMENT IMPACTS (INCLUDING BOTH DIRECT AND INDIRECT EFFECTS) IN ACRES FOR THE NEXT 25 YEARS FOR SCENARIOS 1 AND 5 OF EACH LESSER PRAIRIE-CHICKEN ECOREGION AND RANGEWIDE

Ecoregion	Projected wind development impacts (acres)	
	Scenario 1	Scenario 5
Short-Grass/CRP .....	68,300	134,200
Mixed-Grass .....	50,200	106,000
Sand Sagebrush .....	3,900	21,300
Northern DPS totals .....	122,400	261,500
Shinnery Oak (Southern DPS) .....	41,700	66,500
Rangewide Total .....	164,100	328,000

Electrical transmission capacity represents a major limitation on wind energy development in the Great Plains. Additional transmission lines will be required to transport future electricity production to markets; thus, we expect an expansion of the current transmission capacity in the Great Plains. As this expansion occurs, these transmission lines will, depending on their location, result in habitat loss as well as further fragmentation and could also be the catalyst for additional wind development affecting the lesser prairie-chicken. While we were able to analyze the current impacts of transmission lines on the lesser prairie-chicken, due to the lack of information available to

project the location (and thus effects to lesser prairie-chicken habitat), we could not quantify the future potential effect of habitat loss and fragmentation on the lesser prairie-chicken that could be caused by transmission line development. However, we do acknowledge potential habitat loss and fragmentation from transmission lines is likely to continue depending upon their location.

#### Woody Vegetation Encroachment

Due to the past encroachment trends and continued suppression of fire across the range of the lesser prairie-chicken, we expect this encroachment of woody vegetation into grasslands to continue,

which will result in further loss of lesser prairie-chicken habitat into the foreseeable future. The degree of future habitat impacts will depend on land management practices and the level of conservation efforts for woody vegetation removal.

To describe the potential future effects of encroachment of woody vegetation, we used available information regarding rates of increases in eastern red cedar and mesquite encroachment and applied this rate of change (over the next 25 years) to the amount of existing woody vegetation per ecoregion within the analysis area (Appendix C). The estimated current condition analysis described in “Threats

Influencing Current Condition” provides the baseline of woody vegetation encroachment, and rates derived from the literature were applied to this baseline to project new acres of encroachment. We then adjusted the projected number of new acres of encroachment using relative density calculations specific to each ecoregion to account for indirect effects.

Additionally, due to assumed differences in encroachment rates and tree densities we provide two projections for each of the Short-Grass/CRP and Mixed-Grass Ecoregions (East and West portions) in the Northern DPS, largely based on current tree distribution and precipitation gradient. We projected the extent of expected habitat loss due to encroachment of

woody vegetation at low, intermediate, and high levels of encroachment (see the SSA report (Service 2021, Appendix C) for rationale behind assumed rates of change). Table 13 outlines the three levels of this projected habitat loss by ecoregion caused by future encroachment of woody vegetation over the next 25 years for the purpose of the SSA report.

TABLE 13—PROJECTION OF IMPACTS FROM WOODY VEGETATION ENCROACHMENT (INCLUDING BOTH DIRECT AND INDIRECT EFFECTS) AT THREE LEVELS AT YEAR 25 IN THE LESSER PRAIRIE-CHICKEN ECOREGIONS

[Numbers may not sum due to rounding]

Ecoregion	Projected impacts (acres)		
	Low	Intermediate	High
Short-Grass/CRP—East .....	38,830	64,489	93,877
Short-Grass/CRP—West .....	1,390	3,598	5,963
Mixed-Grass—East .....	311,768	517,784	753,739
Mixed-Grass—West .....	874	2,261	3,748
Sand Sagebrush .....	7,650	12,706	18,496
 Northern DPS totals .....	 360,512	 600,838	 875,823
Shinnery Oak (Southern DPS) .....	11,548	81,660	170,653
 Rangewide Total .....	 372,060	 682,498	 1,046,476

#### Roads and Electrical Distribution Lines

Roads and electrical distribution lines are another important source of habitat loss and fragmentation. In our geospatial analysis for the current condition of the lesser prairie-chicken, we were able to quantify the area affected by roads, but no data were available to quantify the potential independent impacts of distribution lines on habitat loss and fragmentation. We acknowledge that some additional habitat loss and fragmentation will occur in the future due to construction of new roads and power lines, but we do not have data available to inform projections on how much and where any potential new development would occur.

#### Climate Change

Future climate projections for this region of the United States indicate general trends of increasing temperatures and increasing precipitation extremes over the 21st century (Karl et al. 2009, pp. 123–128; Kunkel et al. 2013, pp. 73–75; Shafer et al. 2014, pp. 442–445; Easterling et al. 2017, pp. 216–222; Vose et al. 2017, pp. 194–199). Average temperature has already increased between the first half of the last century (1901–1960) and present day (1986–2016), with observed regional average temperatures within the Southern Great Plains (including Kansas, Oklahoma, and Texas)

increasing by 0.8 °F (0.4 °C) and within the Southwest (including Colorado and New Mexico) increasing by 1.6 °F (0.9 °C) (Vose et al. 2017, p. 187). By mid-century (2036–2065), regional average temperatures compared to near-present times (1976–2005) are projected to increase by 3.6–4.6 °F (2.0–2.6 °C) in the Southern Great Plains, and by 3.7–4.8 °F (2.1–2.7 °C) in the Southwest, depending on future emissions. By late-century (2071–2100), regional average temperatures are projected to rise in the Southern Great Plains by 4.8–8.4 °F (2.7–4.7 °C), and by 4.9–8.7 °F (2.7–4.8 °C) in the Southwest (Vose et al. 2017, p. 197). Annual extreme temperatures are also consistently projected to rise faster than annual averages with future changes in very rare extremes increasing; by late century, current 1-in-20 year maximums are projected to occur every year, while current 1-in-20 year minimums are not expected to occur at all (Vose et al. 2017, pp. 197–198).

Projecting patterns of changes in average precipitation across these regions of the United States results in a range of increasing and decreasing precipitation with high uncertainty in overall averages, although parts of the Southwest are projected to receive less precipitation in the winter and spring (Easterling et al. 2017, pp. 216–218; Wuebbles et al. 2017, p. 12). However,

extreme precipitation events are projected to increase in frequency in both the Southern Great Plains and the Southwest (Easterling et al. 2017, pp. 218–221). Other extreme weather events such as heat waves and long duration droughts (Cook et al. 2016, entire), as well as heavy precipitation, are expected to become more frequent (Karl et al. 2009, pp. 124–125; Shafer et al. 2014, p. 445; Walsh et al. 2014, pp. 28–40). The devastating ‘dust bowl’ conditions of the 1930s could become more common in the American Southwest, with future droughts being much more extreme than most droughts on record (Seager et al. 2007, pp. 1181, 1183–1184). Other modeling also projects changes in precipitation in North America through the end of this century, including an increase in dry conditions throughout the Central Great Plains (Swain and Hayhoe 2015, entire). Furthermore, the combination of increasing temperature and drought results in greater impacts on various ecological conditions (water availability, soil moisture) than increases in temperature or drought alone (Luo et al. 2017, entire). Additionally, future decreases in surface (top 4 inches (10 centimeters)) soil moisture over most of the United States are likely as the climate warms under higher scenarios (Wehner et al. 2017, p. 231).

Grasslands are critically endangered globally and an irreplaceable ecoregion in North America, and climate change is an emerging threat to grassland birds (Wilsey et al. 2019). In a review of potential effects of ongoing climate change on the Southern Great Plains and on the lesser prairie-chicken, results suggest increases in temperatures throughout the lesser prairie-chicken range and possible increases in average precipitation in the northern part of the range but decreasing precipitation in the southern portion of its range (Grisham et al. 2016b, pp. 222–227). Weather changes associated with climate change can have direct effects on the lesser prairie-chicken, leading to reduced survival of eggs, chicks, or adults, and indirect effects on lesser prairie-chicken are likely to occur through a variety of means including long-term (by mid and late twenty-first century) changes in grassland habitat. Other indirect effects may include more secondary causes such as increases in predation pressure or susceptibility to parasites or diseases. We have little information to describe future grassland conditions as a result of long-term climate changes, although warmer and drier conditions would most likely reduce overall habitat quality for lesser prairie-chicken in much of its range. In general, the vulnerability of lesser prairie-chicken to the effects of climate change depends on the degree to which it is susceptible to, and unable to cope with, adverse environmental changes due to long-term weather trends and more extreme weather events. Based on an analysis of future climate projections the lesser prairie-chicken could have a net loss of more than 35 percent to 50 percent of its range due to unsuitable climate variables (Salas et al. 2017, p. 370).

One area of particular vulnerability for the lesser prairie-chicken is the need for specific thermal profiles in the microhabitats they use for nesting and rearing of broods. Warmer air and surface soil temperatures and the related decreased soil moisture near nest sites have been correlated with lower survival and recruitment in the lesser prairie-chicken (Bell 2005, pp. 16, 21). On average, lesser prairie-chicken avoid sites for nesting that are hotter, drier, and more exposed to the wind (Patten et al. 2005, p. 1275). Nest survival probability decreased by 10 percent every half-hour when temperature was greater than 93.2 °F (34 °C) and vapor pressure deficit was less than –23 mmHg during the day (Grisham et al. 2016c, p. 737). Thermal profiles from nests in some cases exceeded 130 °F (54.4 °C) with humidity below 10

percent at nests in Texas and New Mexico in 2011, which are beyond the threshold for nest survival (Grisham et al. 2013, p. 8). Increased temperatures in the late spring as projected by climate models may lead to egg death or nest abandonment of lesser prairie-chicken (Boal et al. 2010, p. 4). Furthermore, if lesser prairie-chicken shift timing of reproduction (to later in the year) to compensate for lower precipitation, then impacts from higher summer temperatures could be exacerbated. In a study of greater prairie-chickens, heterogeneous grasslands have high thermal variability with a range of measured operative temperatures spanning 41 °F (23 °C) with air temperatures >86 °F (30 °C) (Hovick et al. 2014b, pp. 1–5). In this setting, females selected nest sites that were as much as 14.4 °F (8 °C) cooler than the surrounding landscape.

Although the entire lesser prairie-chicken range is likely to experience effects from ongoing climate change, the southern part of the Southern DPS (the Shinnery Oak Ecoregion) may be particularly vulnerable to warming and drying weather trends, as this portion of the range is already warmer and drier than northern portions and is projected to continue that trend (Grisham et al. 2013, entire; Grisham et al. 2016c, p. 742). Research in the Shinnery Oak Ecoregion relating projections in weather parameters in 2050 and 2080 to nest survival found with high certainty that the negative effects on future nest survival estimates will be significant, and the resulting survival rates are too low for population sustainability in the Southern Great Plains in the absence of other offsetting influences (Grisham et al. 2013, pp. 6–7). As late spring and summer daily high temperatures rise, the ability for lesser prairie-chicken to find appropriate nest sites and successfully rear broods is expected to decline. Lower rates of successful reproduction and recruitment lead to further overall declines in population abundance and resiliency to withstand stochastic events such as extreme weather events.

Extreme weather effects such as drought, heat waves, and storms can also directly affect lesser prairie-chicken survival and reproduction and can result in population crashes due to species responses including direct mortality from thermal stress, increased predation due to larger foraging areas, or decreased fitness when food resources are scarce. Like other wildlife species in arid and semiarid grasslands, lesser prairie-chicken on the Southern High Plains have adaptations that increase resilience to extreme environments and

fluctuating weather patterns; however, environmental conditions expected from climate change may be outside of their adaptive potential, particularly in the timeframe weather changes are expected to occur (Fritts et al. 2018, p. 9556). Extreme weather events and periods of drying of soil surface moisture are projected to increase across the lesser prairie-chicken range (Easterling et al. 2017, pp. 218–222; Wehner et al. 2017, pp. 237–239). In Kansas, extreme drought events in the summers from 1981 through 2014 had a significant impact on lesser prairie-chicken abundance recorded at leks; thus, increases in drought frequency and intensity could have negative consequences for the lesser prairie-chicken (Ross et al. 2016a, pp. 6–7). Even mild increases in drought had significant impacts on the likelihood of population extirpation for lesser prairie-chicken (De Angelis 2017, p. 15).

Drought is a particularly important factor in considering lesser prairie-chicken population changes. The lesser prairie-chicken is considered a “boom-bust” species, meaning that there is a high degree of annual variation in population size due to variation in rates of successful reproduction and recruitment. These variations are largely driven by seasonal precipitation patterns (Grisham et al. 2013, pp. 6–7). Periods of below-normal precipitation and higher spring/summer temperatures result in less appropriate grassland vegetation cover and fewer food sources, resulting in decreased reproductive output (bust periods). Periods with favorable climatic conditions (above-normal precipitation and cooler spring/summer temperatures) will support favorable lesser prairie-chicken habitat conditions and result in high reproductive success (boom periods). The lesser prairie-chicken population failed to rebound for at least 4 years following the 2011 drought (Fritts et al. 2018, pp. 9556–9557). This information indicates either that the extreme environmental conditions during 2011 may have been beyond what the lesser prairie-chicken is adapted to or that the return period following the 2008–2009 dry period and ensuing low population numbers in 2010 was too short for the population to recover enough to be resilient to the 2011 drought.

The resilience and resistance of species and ecosystems to changing environmental conditions depend on many circumstances (Fritts et al. 2018, entire). As climatic conditions shift to more frequent and intense drought cycles, this shift is expected to result in more frequent and extreme bust years for the lesser prairie-chicken and fewer

boom years. As the frequency and intensity of droughts increase in the Southern Great Plains region, there will be diminishing opportunity for boom years with above-average precipitation. Overall, more frequent and intense droughts may lessen the intensity of boom years of the lesser prairie-chicken population cycle in the future which would limit the ability of the species to rebound following years of drought (Ross et al. 2018, entire). These changes will reduce the overall resiliency of lesser prairie-chicken populations and exacerbate the effects of habitat loss and fragmentation. Because lesser prairie-chicken carrying capacities have already been much reduced, if isolated populations are extirpated due to seasonal weather conditions, they cannot be repopulated due to the lack of nearby populations.

Although climate change is expected to alter the vegetation community across the lesser prairie-chicken range (Grisham et al. 2016b, pp. 228–231), we did not account for the future effects of climate change in our geospatial habitat model, as we did not have information to inform specific land cover changes predicted to result from future climate change (Service 2021, p. 92).

The best available information supports that climate change projections of increased temperatures, increased precipitation extremes, increased soil drying, and an increase of severe events such as drought and storms within the Southern Great Plains are likely to have significant influences on the future resiliency of lesser prairie-chicken populations by mid to late 21st century. These trends are expected to exacerbate the challenges related to past and ongoing habitat loss and fragmentation, making it less likely for populations to withstand extreme weather events that are likely to increase in frequency and severity.

#### Other Factors

##### Livestock Grazing

We expect that grazing will continue to be a primary land use on the remaining areas of grassland within the range of the lesser prairie-chicken in the future, and grazing influences habitat suitability for the lesser prairie-chicken (Diffendorfer et al. 2015, p. 1). When managed to produce habitat conditions that are beneficial for the lesser prairie-chicken, grazing is an invaluable tool for maintaining healthy prairie ecosystems. However, if grazing is managed in a way that is focused on maximizing short-term cattle production, resulting in rangeland that is overused, this could have significant negative effects on the

lesser prairie-chicken. Grazing management varies both spatially and temporally across the landscape. Additionally, grazing management could become more difficult in the face of a changing climate with more frequent and intense droughts.

Our geospatial model does not account for impacts to habitat quality as data needed to characterize habitat quality for the lesser prairie-chicken at the scale and resolution needed for our analysis do not exist. While data do not exist to quantify rangewide extent of grazing practices and their effects on habitat, livestock grazing will continue to influence lesser prairie-chicken populations in the foreseeable future.

##### Shrub Control and Eradication

The removal of native shrubs such as sand shinnery oak is an ongoing concern to lesser prairie-chicken habitat availability throughout large portions of its range, particularly in New Mexico, Oklahoma, and Texas. While relatively wide-scale shrub eradication has occurred in the past, we do not have geospatial data to evaluate the extent to which shrub eradication has contributed to habitat loss and fragmentation for the lesser prairie-chicken. While some Federal agencies such as BLM limit this practice in lesser prairie-chicken habitat, shrub control and eradication still occur through some Federal programs and on private lands, which make up the majority of the lesser prairie-chicken range. Though we expect this threat to continue to impact the species into the foreseeable future, we do not have data available to project the potential scale of habitat loss likely to occur in the future due to shrub eradication.

##### Fire

As discussed in “Threats Influencing Current Condition,” the current lack of prescribed fire use in the range of the lesser prairie-chicken is contributing to woody plant encroachment and degradation of grassland quality.

As the effects of fire suppression continue to manifest throughout the Great Plains, the future impacts of wildfires on the lesser prairie-chicken are difficult to predict. If recent patterns continue with wildfires occurring at increasingly larger scales with less frequency and higher intensities than historical fire occurrence, there is an increasing potential of greater negative impacts on lesser prairie-chicken. Additionally, as climate change projections are indicating the possibility of longer and more severe droughts across the range of the lesser prairie-chicken, this could alter the vegetation

response to fire both temporally and spatially. An expansive adoption of prescribed fire in management of remaining grasslands would be expected to have a moderating effect on risk of wildfires and concurrently would reduce woody plant encroachment and increase habitat quality and diversity. We are not able to quantify these impacts on the future condition of the landscape in our geospatial analysis due to lack of data and added complexity, but we acknowledge that fire (both prescribed fires and wildfire), or its absence, will continue to be an ecological driver across the range of the lesser prairie-chicken in the future with potentially positive and negative effects across both short-term and long-term timelines in the foreseeable future.

#### Projected Future Habitat Conditions and Trends

To forecast the potential changes in future lesser prairie-chicken habitat, we used the projected levels of potential future impacts from conversion to cropland, petroleum production, wind energy development, and woody vegetation encroachment. We also worked with the primary conservation entities delivering ongoing, established lesser prairie-chicken conservation programs to develop estimated reasonable projections for rates of future conservation efforts. We asked the entities to provide us with information to project three levels of conservation: Low, continuation, and high. We asked the conservation entities not provide aspirational goals for a given program but instead to solely use past performance, funding expectations, and expert opinion to provide plausible future rates for given conservation practices. We then used this information to estimate future conservation efforts over the next 25 years for the lesser prairie-chicken.

The results of this future geospatial model (Service 2021, Section 4.2 and Appendices B and C) is provided in Table 14; further details and maps are available in Appendix E of the SSA report. The median results show a very modest increase in areas available for use by lesser prairie-chicken in our nearest neighbor analysis under Scenario 1 (assuming high levels of restoration and low levels of impacts) (with an increase for the Shinnery Oak Ecoregion and a decrease for the other three ecoregions) and decreasing amounts of projected declines in areas available for use by lesser prairie-chicken under Scenarios 2–5 (Table 14). Rangewide changes in areas available for use by lesser prairie-chicken in our nearest neighbor analysis range from a

0.5 percent increase under Scenario 1 to a 26 percent decrease in Scenario 5. This analysis indicated additional future habitat loss and fragmentation across the range of the lesser prairie-chicken is likely to occur, and

conservation actions will not be enough to offset those habitat losses. Our analysis finds that the expected conservation efforts are inadequate to prevent continued declines in total habitat availability, much less restore

some of what has been lost, and species viability for this species will continue to decline.

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TABLE 14.—PROJECTED FUTURE MEDIAN ACREAGE OF LESSER PRAIRIE-CHICKEN AREAS AVAILABLE FOR USE AS A RESULT OF OUR NEIGHBORHOOD ANALYSIS IN ACRES, AND SHOWING PERCENT CHANGE IN ACREAGE FROM ESTIMATED CURRENT AREAS AVAILABLE FOR USE AS A RESULT OF OUR NEIGHBORHOOD ANALYSIS, IN 25 YEARS.

Ecoregion	Total Area	Current Condition	Scenario 1		Scenario 2		Scenario 3		Scenario 4		Scenario 5	
			Median	% Change								
Short-Grass/CRP	6,298,014	1,023,894	975,047	-4.8%	956,190	-6.6%	877,663	-14.3%	808,152	-21.1%	776,111	-24.2%
Mixed-Grass	8,527,718	994,483	974,200	-2.0%	864,780	-13.0%	742,855	-25.3%	649,227	-34.7%	630,633	-36.6%
Sand Sagebrush	3,153,420	1,028,523	992,632	-3.5%	980,302	-4.7%	932,477	-9.3%	887,224	-13.7%	884,851	-14.0%
Shinnery Oak	3,850,209	1,023,572	1,149,759	12.3%	988,072	-3.5%	868,761	-15.1%	771,923	-24.6%	711,933	-30.4%
Rangewide Totals	21,829,361	4,070,473	4,091,638	0.5%	3,789,343	-6.9%	3,421,756	-15.9%	3,116,525	-23.4%	3,003,529	-26.2%

It is important to note that these acreages consist of patches of fragmented habitat among developed areas and other unsuitable habitat. Based on our geospatial analysis, the vast majority of blocks of usable habitat and the total area within those blocks, both in the current condition and in future scenarios, are less than 12,000 ac (4,856 ha), and very few blocks were greater than 50,000 ac (20,234 ha) (Service 2021, Figure 4.2). As discussed above, the space required by lesser prairie-chicken to support individuals from a single lek is approximately 12,000–50,000 ac (4,856–20,234 ha). The dominance of smaller blocks on the landscape further exhibits that those spaces are highly fragmented, even with the remaining potential usable area for the lesser prairie-chicken totaling approximately 4,000,000 ac (1,600,000 ha) in the current condition, and potentially declining to as low as 3,000,000 ac (1,200,000 ha) under scenario 5 for our future condition projections. High levels of fragmentation, as discussed in “Threats Influencing Current Condition,” do not provide the landscape composition needed for long-term stability of

populations. Additionally, in spaces that are highly fragmented, relatively small amounts of additional impacts may have great consequences as landscape composition thresholds for the lesser prairie-chicken are surpassed.

Several habitat enhancement actions for the lesser prairie-chicken are being implemented across the analysis area. These enhancement actions are implemented on existing habitat to enhance the quality of that given area. We asked our conservation partners to provide us with a range of plausible rates for conservation efforts occurring within the lesser prairie-chicken analysis area by ecoregion. We also requested information regarding effectiveness, project lifespan, and spatial targeting of these efforts (Service 2021, Appendix C, Section C.3.4). Next, we converted those rates for each program and conservation effort to the total effort at year 25. Table 15 summarizes the three projected levels of future habitat enhancement over the next 25 years for each ecoregion. These efforts represent those above and beyond what is already accounted for within the current condition analysis. Acreage enrolled in CCAAs are assumed

to continue to be enrolled in the future, and CCAA projections within this table represent enrollments in addition to existing enrollments. This table also does not include continued management actions on permanently protected properties (such as State-owned wildlife management areas or conservation banks), as it is assumed this management will continue. Additionally, the numbers reported for NRCS grazing plans are acres in addition to the number of acres reported above in “Conservation Efforts” that are being managed under prescribed grazing for the lesser prairie-chicken by NRCS, as we assume that as contract acres expire from the program additional acres will be enrolled.

The actual conservation benefit provided to the lesser prairie-chicken by these programs varies greatly and is difficult to summarize because it depends on the location and the specific actions being carried out for each individual agreement. In addition, the level of future voluntary participation in these programs can be highly variable depending on available funding, opportunities for other revenue sources, and many other circumstances.

TABLE 15—PROJECTED AMOUNT OF HABITAT ENHANCEMENT (IN ACRES) OVER THE NEXT 25 YEARS WITHIN THE FOUR LESSER PRAIRIE-CHICKEN ECOREGIONS

Enhancement efforts	Total level of future effort (acres) at year 25		
	Low	Continuation	High
<b>Short-Grass/CRP Ecoregion</b>			
KDWPT Enhancement Contract .....	0	6,740	17,500
NRCS LPCI Grazing Plan .....	0	0	4,000
USFWS PFW Contract .....	14,000	14,000	20,000
<b>Mixed-Grass Ecoregion</b>			
WAFWA Management Plan .....	0	0	118,245
KDWPT Enhancement Contract .....	0	120	3,100
ODWC Management .....	1,400	3,300	6,400
ODWC Additional CCAA Enrollment .....	0	50,000	100,000
NRCS LPCI Grazing Plan .....	0	0	58,000
USFWS PFW Contract .....	50,000	50,000	70,000
TPWD Additional CCAA Enrollment .....	0	0	550,000
<b>Sand Sagebrush Ecoregion</b>			
KDWPT Enhancement Contract .....	0	720	4,400
CPW Enhancement Contract .....	0	12,200	37,900
NRCS LPCI Grazing Plan .....	0	0	13,000
USFWS PFW Contract .....	0	6,000	18,000
<b>Shinnery Oak Ecoregion</b>			
WAFWA Management Plan .....	0	0	8,129
NRCS LPCI Grazing Plan .....	0	0	39,000
BLM Prescribed Fire .....	0	25,000	100,000
NM CCAA Prescribed Fire .....	50,000	100,000	150,000
USFWS PFW Contract .....	5,000	15,000	50,000
TPWD Additional CCAA Enrollment .....	0	0	60,000

## Future Population Trends

Several estimates of lesser prairie-chicken population growth rates have been based on current conditions for the lesser prairie-chicken, with most derived from demographic matrix models (Fields 2004, pp. 76–83; Hagen et al. 2009, entire; Sullins 2017, entire; Cummings et al. 2017, entire). Most studies project declining lesser prairie-chicken populations; however, the magnitude of actual future declines is unlikely to be as low as some modeling tools indicate (Service 2021, Table 4.10). Most positive population growth calculations were derived from 2014–2016 (Hagen et al. 2017, Supplemental Information; Service 2021, Table 4.10), where estimates indicated populations have increased. However, we caution that any analysis using growth rates based upon short-term data sets can be problematic as they are very sensitive to the starting and ending points in the estimates. Additionally, these growth rates are accompanied by relatively large margins of error.

Estimates based on aerial surveys over the past 9 years have indicated a rangewide fluctuating population beginning with an estimated 28,366 (90 percent CI: 17,055–40,581) individuals in 2012 to an estimated 34,408 (90 percent CI: 21,270–47,946) individuals in 2020. Included within this timeframe was a population low of 15,397 (90 percent CI: 8,145–22,406) individuals in 2013. We caution against drawing inferences from point estimates based upon these data due to low detection probabilities of the species leading to large confidence intervals. We also caution that trend analyses from short-term data sets are highly sensitive to starting and ending population sizes. For example, if you use 2012, the first year of available rangewide survey data, as the starting point for a trend analysis, it may appear that populations are relatively stable to slightly increasing, but during the years of 2010–2013, the range of the lesser prairie-chicken experienced a severe drought and thus lesser prairie-chicken populations were at historic lows. If the data existed to perform the same analysis using the starting point as 2009, then the results would likely show a decreasing population trend.

The future risk of extinction of the lesser prairie-chicken has been evaluated using historical ground surveys (Garton et al. 2016, pp. 60–73). This analysis used the results of those surveys to project the risk of lesser prairie-chicken quasi-extinction in each of the four ecoregions and rangewide over two timeframes, 30 and 100 years

into the future. For this analysis, quasi-extinction was set at effective population sizes (demographic  $N_e$ ) of 50 (populations at short-term extinction risk) and 500 (populations at long-term extinction risk) adult breeding birds, corresponding to an index based on minimum males counted at leks of  $\leq 85$  and  $\leq 852$ , respectively (Garton et al. 2016, pp. 59–60). The initial analysis using data collected through 2012 was reported in Garton et al. (2016, pp. 60–73), but it has since been updated to include data collected through 2016 (Hagen et al. 2017, entire). We have identified concerns in the past with some of the methodologies and assumptions made in this analysis, and the challenges of these data are noted in Zavaleta and Haukos (2013, p. 545) and Cummings et al. (2017, pp. 29–30). While these concerns remain, this work represents one of the few attempts to project risk to the species across its range, and we considered it as part of our overall analysis and recognize any limitations associated with the analysis.

Results were reported for each analysis assuming each ecoregion is functioning as an independent population and also assuming there is movement of individuals between populations (Service 2021, Table 4.11; Table 4.12). The results suggest a wide range of risks among the ecoregions, but the Sand Sagebrush Ecoregion consistently had the highest risks of quasi-extinction and the Short-Grass/CRP Ecoregion had the lowest. This analysis was based only on simulating demographic variability of populations and did not incorporate changing environmental conditions related to habitat or climate.

## Determination of Lesser Prairie-Chicken Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines “endangered species” as a species “in danger of extinction throughout all or a significant portion of its range,” and “threatened species” as a species “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The Act requires that we determine whether a species meets the definition of “endangered species” or “threatened species” because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational

purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

## Status of the Southern DPS of the Lesser Prairie-Chicken Throughout All of Its Range

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Southern DPS of the lesser prairie-chicken and its habitat. We analyzed effects associated with habitat degradation, loss, and fragmentation, including conversion of grassland to cropland (Factor A), petroleum production (Factor A), wind energy development and transmission (Factor A), woody vegetation encroachment (Factor A), and roads and electrical distribution lines (Factor A); other factors, such as livestock grazing (Factor A), shrub control and eradication (Factor A), collision mortality from fences (Factor E), predation (Factor C), influence of anthropogenic noise (Factor E), and fire (Factor A); and extreme weather events (Factor E). We also analyzed the effects of existing regulatory mechanisms (Factor D) and ongoing conservation measures. In the SSA report, we also considered three additional threats: Hunting and other recreational, educational, and scientific use (Factor B); parasites and diseases (Factor C); and insecticides (Factor E). We consider all of these impacts now in analyzing the status of the Southern DPS.

Over the past several decades, habitat loss, fragmentation, and degradation have resulted in the loss of large areas of the habitat that supports the lesser prairie-chicken in the Southern DPS. Suitable habitat has been lost as grasslands are converted to cropland, and as petroleum and natural gas production and wind energy development have resulted in further loss of habitat. The lesser prairie-chicken is particularly vulnerable to changes on the landscape, as it requires large blocks of suitable habitat to complete its life-history needs. This includes its lek breeding system, which requires males and females to be able to hear and see each other over relatively wide distances, the need for large patches of habitat that include several types of microhabitats, and the behavioral avoidance of vertical structures. In the case of petroleum and wind energy production, the extent of the impact from the threat is not just the original site, but also all roads, powerlines, and other infrastructure associated with the sites, and noise

associated with those areas that may interfere with communication between male and female birds.

In the Southern DPS, woody vegetation encroachment by honey mesquite has played a significant role in limiting available space for the lesser prairie-chicken and is one of the primary threats to the species in this DPS. Fire, incompatible grazing management, and drought associated with climate change also continue to degrade habitat. The size of fires, especially in areas dominated by woody vegetation, are increasing. When managed compatibly, fire and grazing can improve habitat quality. However, fire management efforts are currently occurring on only a limited portion of the lesser prairie-chicken range.

The Southern DPS is particularly vulnerable to effects associated with climate change and drought, as it is already warmer and drier than the Northern DPS. That warmer and drier trend is expected to continue (Grisham et al. 2013, entire; Grisham et al. 2016c, p. 742). Given the needs of lesser prairie-chicken for cool microclimates to find appropriate nest sites and rear broods, droughts like those that have recently occurred on the landscape could further impact already declining population growth rates in this DPS.

Some conservation measures and regulatory mechanisms are acting to reduce the magnitude of threats impacting the lesser prairie-chicken and its habitat. However, our analysis demonstrates that the restoration efforts have not been enough to offset the impacts of habitat loss and fragmentation and conservation efforts focused on localized management to affect habitat quality, while not addressing the overarching limiting factor of habitat loss and fragmentation, is not addressing the long-term population needs for the lesser prairie-chicken. Thus, these measures are only minimally ameliorating the threats acting throughout the DPS.

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we conclude that the Southern DPS is continuing to experience ongoing habitat loss and fragmentation, and additional threats from influence of anthropogenic noise and extreme weather events, particularly droughts. Currently, only 27 percent of this ecoregion is available for use by the lesser prairie-chicken. Based on mean population estimates, the Southern DPS has very low resiliency to stochastic events. It may have as few as 5,000 birds remaining. The population count dropped to as low as 1,000 birds in 2015

after the last severe drought. Under current climactic conditions, another wide-scale severe drought could occur in this ecoregion at any time, and the species may not be able to recover. Overall, the lesser prairie-chickens in the Southern DPS are likely to continue to experience declines in resiliency, redundancy, and genetic representation. Thus, after assessing the best available information, we determine that the Southern DPS of the lesser prairie-chicken is in danger of extinction throughout all of its range. We find that a threatened species status is not appropriate for the Southern DPS because it is currently in danger of extinction.

#### Status of the Southern DPS of the Lesser Prairie-Chicken Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the Southern DPS of the lesser prairie-chicken is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the Southern DPS of the lesser prairie-chicken warrants listing as endangered throughout all of its range, our determination is consistent with the decision in *Center for Biological Diversity v. Everson*, 2020 WL 437289 (D.D.C. Jan. 28, 2020), in which the court vacated the aspect of the 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 the Services do not undertake an analysis of significant portions of a species’ range if the species warrants listing as endangered throughout all of its range.

#### Determination of Status of the Southern DPS of the Lesser Prairie-Chicken

Our review of the best available scientific and commercial information indicates that the Southern DPS of the lesser prairie-chicken meets the definition of an endangered species. Therefore, we propose to list the Southern DPS of the lesser prairie-chicken as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

#### Status of the Northern DPS of the Lesser Prairie-Chicken Throughout All of Its Range

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Northern DPS of the lesser prairie-chicken and its habitat. We analyzed effects associated with habitat degradation, loss, and fragmentation, including conversion of grassland to cropland (Factor A), petroleum production (Factor A), wind energy development and transmission (Factor A), woody vegetation encroachment (Factor A), and roads and electrical distribution lines (Factor A); other factors, such as livestock grazing (Factor A), shrub control and eradication (Factor A), collision mortality from fences (Factor E), predation (Factor C), influence of anthropogenic noise (Factor E), and fire (Factor A); and extreme weather events (Factor E). We also analyzed existing regulatory mechanisms (Factor D) and ongoing conservation measures. In the SSA report, we also considered three additional threats: Hunting and other recreational, educational, and scientific use (Factor B); parasites and diseases (Factor C); and insecticides (Factor E). As with the Southern DPS, we consider all of these impacts now in analyzing the status of the Northern DPS.

As is the case in the Southern DPS, habitat degradation, loss, and fragmentation is the primary threat to the lesser prairie-chicken in this DPS, with other threats such as fire, incompatible livestock grazing, and extreme weather events further decreasing population resiliency and species redundancy. The largest impacts in this DPS are cropland conversion and woody vegetation encroachment. The Sand Sagebrush Ecoregion is also experiencing habitat degradation due to incompatible grazing management. The Short-Grass/CRP region has the highest number of birds, with a 5-year estimate of approximately 17,000 birds. Other portions of the range have lower population resiliency. In particular, the Sand Sagebrush Ecoregion has approximately 1,000 birds remaining (Table 2).

Resiliency of populations throughout the Northern DPS has decreased from historical levels, though the DPS still has redundancy across the three ecoregions and genetic and environmental representation. However, our future scenario analysis demonstrates that the current threats acting on the landscape are expected to either continue at the same levels or increase in severity in the foreseeable

future. Habitat loss is projected to outpace conservation efforts to restore habitat. Though we do not expect rates of habitat conversion to cropland to be equivalent to the rates that we historically witnessed, we expect any additional conversion that does occur will have a disproportionately large effect on resiliency and redundancy due to the limited amount of remaining large intact grasslands. Conversion of habitat due to oil, gas, and wind energy will continue to occur, though the rates of development are uncertain. Woody vegetation encroachment is also expected to continue, particularly in the Mixed-Grass Ecoregion. Increased drought and severe weather events associated with climate change are expected to decrease population resiliency and redundancy into the foreseeable future, and as habitat availability continues to decline, and available habitat blocks decrease in size, populations may decline to below quasi-extinction levels. Our future scenarios project that usable habitat will decrease from 3–25 percent within the Northern DPS (5–24 percent in the Short-Grass/CRP Ecoregion, from 2–37 percent in the Mixed-Grass Ecoregion, and from 3–14 percent in the Sand Sagebrush Ecoregion) due to projected impacts from conversion to cropland, energy development, and woody vegetation encroachment.

Conservation measures and regulatory mechanisms are acting to reduce the magnitude of threats impacting the lesser prairie-chicken and its habitat. However, our analysis demonstrates that future restoration efforts will not be enough to offset the impacts of habitat loss and fragmentation and conservation efforts focused on localized management to affect habitat quality, while not addressing the overarching limiting factor of habitat loss and fragmentation, is not addressing the long-term population needs for the lesser prairie-chicken. Thus, these measures are having only minimal impacts on threats acting throughout the DPS.

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we find that the lesser prairie-chicken maintains populations in all three ecoregions in the Northern DPS, and has genetic and ecological representation in those ecoregions, as well as population redundancy across the entirety of the DPS. Thus, lesser prairie-chicken in the Northern DPS are not currently in danger of extinction, and thus the Northern DPS does not meet the definition of endangered. However, based on our future

projections, habitat will become increasingly fragmented and less able to support lesser prairie-chickens. Thus, after assessing the best available information, we conclude that the Northern DPS of the lesser prairie-chicken is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

#### Status of the Northern DPS of the Lesser Prairie-Chicken Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity v. Everson*, 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Everson*), vacated the aspect of the 2014 Significant Portion of its Range Policy that provided that the Services do not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the “significance” question or the “status” question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

We apply the term “significant” differently for the purpose of the “significant portion of the range” analysis than the DPS analysis. The DPS Policy requires that for a vertebrate population to meet the Act's definition of “species,” the population must be discrete from other populations and must be significant to the taxon as a whole. The use of “significant to the taxon as a whole” under the DPS Policy is necessarily broad. Notably, a segment could be “significant to the taxon as a whole” for the DPS policy but not be “significant” for the different analysis under the Significant Portion of Its Range Policy. Thus, a determination that an area is significant for the purposes of DPS does not necessarily mean that it will be significant for the purposes of the Significant Portion of Its Range Policy.

Following the court's holding in *Center for Biological Diversity*, we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.*, endangered). In undertaking this analysis for the Northern DPS of the lesser prairie-chicken, 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. We evaluated all parts of the Northern DPS, including the Sand Sagebrush Ecoregion, the Mixed Grass Ecoregion, and the Short Grass/CRP Ecoregion. We identified one portion, the Sand Sagebrush Ecoregion, that may meet the definition of endangered, as population estimates have shown the greatest declines in that portion of the range.

For the Northern DPS, 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: Effects associated with habitat degradation, loss, and fragmentation, including conversion of grassland to cropland, petroleum production, wind energy development and transmission, woody vegetation encroachment, and roads and electrical distribution lines; other factors, such as livestock grazing, shrub control and eradication, collision mortality from fences, predation, influence of anthropogenic noise, and fire; extreme weather events, including cumulative effects. However, we did not identify any threats that were concentrated in the Sand Sagebrush Ecoregion that were not at similar levels in the remainder of the range at a biologically meaningful scale.

Thus, there are no portions of the DPS's range where the species has a different status from its rangewide status. Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This is consistent with the courts' holdings in *Desert Survivors v. Department of the Interior*, No. 16-cv-01165-JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity v. Jewell*, 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

## Determination of Status of the Northern DPS of the Lesser Prairie-Chicken

Our review of the best available scientific and commercial information indicates that the Northern DPS of the lesser prairie-chicken meets the definition of a threatened species. Therefore, we propose to list the Northern DPS of the lesser prairie-chicken 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 ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 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. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready

for reclassification from endangered to threatened ("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 will be available on our website (<http://www.fws.gov/endangered>), or from our Arlington 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 (such as restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Colorado, Kansas, New Mexico, Oklahoma, and Texas would be eligible for Federal funds to implement management actions that promote the protection or recovery of the lesser prairie-chicken. Information on our grant programs that are available to aid species recovery can be found at: <http://www.fws.gov/grants>.

Although the Southern DPS and the Northern DPS of the lesser prairie-chicken are 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 lesser prairie-chicken. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Some examples of Federal agency actions within the species' habitat that may require conference or consultation, or both, as described in the preceding paragraph include: Landscape-altering activities on Federal lands; provision of Federal funds to State and private entities through Service programs, such as the PFW Program, the State Wildlife Grant Program, and the Wildlife Restoration Program; construction and operation of communication, radio, and similar towers by the Federal Communications Commission or Federal Aviation Administration; issuance of section 404 Clean Water Act permits by the U.S. Army Corps of Engineers; construction and management of petroleum pipeline by the Federal Energy Regulatory Commission; construction and maintenance of roads or highways by the Federal Highway Administration; implementation of certain USDA agricultural assistance programs; Federal grant, loan, and insurance programs; or Federal habitat restoration programs such as Environmental Quality Incentive Program and CRP; and development of Federal minerals, such as oil and gas.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered

wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any species listed as an endangered species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. For the Northern DPS of the lesser prairie-chicken, which we are proposing to list as threatened, the discussion below in section II regarding protective regulations under section 4(d) of the Act complies with our policy.

We now discuss specific activities related to the Southern DPS, which we are proposing to list as endangered. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive. As identified in the SSA report, restoration actions are essential for conservation of the lesser prairie-chicken. Restoration actions will not constitute a violation of section 9 as those actions are implemented on lands that are not currently lesser prairie-chicken habitat. These restoration actions include:

(1) Planting previously tilled or no till croplands to grasses;

(2) Removal of nonnative or invasive trees and shrubs, not including shinnery oak or sand sagebrush; and

(3) Removal of existing infrastructure including oil and gas infrastructure, electrical transmission and distribution lines, windmills, existing fences, and other anthropogenic features impacting the landscape.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act in the southern DPS of the lesser prairie-chicken if they are not authorized in accordance with applicable law; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

(2) Actions that would result in the unauthorized destruction or alteration of the species' habitat. Such activities could include, but are not limited to, the removal of native shrub or herbaceous vegetation by any means for any infrastructure construction project or the direct conversion of native shrub or herbaceous vegetation to another land use.

(3) Actions that would result in sustained alteration of preferred vegetative characteristics of lesser prairie-chicken habitat, particularly those actions that would cause a reduction or loss in the native invertebrate community within those habitats or alterations to vegetative composition and structure. Such activities could include, but are not limited to, incompatible livestock grazing, the application of herbicides or insecticides, and seeding of nonnative plant species that would compete with native vegetation for water, nutrients, and space.

(4) Actions that would result in lesser prairie-chicken avoidance of an area during one or more seasonal periods. Such activities could include, but are not limited to, the construction of vertical structures such as power lines, communication towers, buildings, infrastructure to support energy development, roads, and other anthropogenic features; motorized and nonmotorized recreational use; and activities such as well drilling, operation, and maintenance, which would entail significant human presence, noise, and infrastructure.

(5) Actions, intentional or otherwise, that would result in the destruction of

eggs or active nests or cause mortality or injury to chicks, juveniles, or adult lesser prairie-chickens.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act in regards to the Southern DPS of the lesser prairie-chicken should be directed to the Arlington Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## II. Proposed Rule Issued Under Section 4(d) of the Act for the Northern DPS of the Lesser Prairie-Chicken

### Background

Section 4(d) of the Act contains two sentences. The first sentence states that the "Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation" of species listed as threatened. The U.S. Supreme Court has noted that statutory language like "necessary and advisable" demonstrates a large degree of deference to the agency (see *Webster v. Doe*, 486 U.S. 592 (1988)). Conservation is defined in the Act to mean "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary." Additionally, the second sentence of section 4(d) of the Act states that the Secretary "may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants." Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife, or include a limited taking prohibition (see *Alsea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of*

*Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, “once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to forbid both taking and importation but allow the transportation of such species” (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), we have developed a proposed rule that is designed to address the specific threats and conservation needs of the Northern DPS of the lesser prairie-chicken. 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 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 Northern DPS of the lesser prairie-chicken. As discussed above under Summary of Biological Status and Threats, we have concluded that the Northern DPS of the lesser prairie-chicken is likely to become in danger of extinction within the foreseeable future primarily due to threats associated with habitat loss, fragmentation, and degradation. The provisions of this proposed 4(d) rule would promote conservation of the Northern DPS of the lesser prairie-chicken by encouraging management of the landscape in ways that meet the conservation needs of the lesser prairie-chicken and identifying the prohibitions needed to conserve the lesser prairie-chicken. We believe it is appropriate to extend the standard section 9 prohibitions for endangered species to the Northern DPS of the lesser prairie-chicken in order to conserve the species.

While developing this proposed 4(d) rule, the Service considered exceptions to the standard section 9 prohibitions for endangered species that would facilitate essential conservation actions needed for the Northern DPS. We consider essential conservation efforts to include restoration actions, utilization of prescribed fire, and compatible grazing management as the primary essential conservation actions needed to conserve the lesser prairie-chicken.

For the purposes of this rule and our SSA analysis we consider restoration actions to be actions that convert areas that are otherwise not habitat for lesser prairie-chickens to areas which are

lesser prairie-chicken habitat. These actions are essential for the species as this is the only way to offset habitat loss and fragmentation. For the lesser prairie-chicken, the primary restoration actions consist of woody vegetation removal in and adjacent to grasslands (this does not include the removal of sand shinnery oak (specifically, *Quercus havardii* species) or sand sagebrush (specifically, *Artemesia filifolia* species)), removal of existing anthropogenic features (such as existing energy infrastructure, roads, fences, windmills, and other anthropogenic features), and converting cropland to grassland. We have determined that an exception under this 4(d) rule is not needed for these restoration actions as they occur on lands already impacted or altered in ways that they no longer represent lesser prairie-chicken habitat and thus there is no potential for a section 9 violation.

We also considered the value provided by the implementation of prescribed fire on the landscape. Prior to extensive Euro-American settlement, frequent fires helped confine trees like eastern red cedar to river and stream drainages and rocky outcroppings. However, settlement of the Southern Great Plains altered the historical ecological context and disturbance regimes. The frequency and intensity of these disturbances directly influenced the ecological processes, biological diversity, and patchiness typical of Great Plains grassland ecosystems, which evolved with frequent fire that helped to maintain prairie habitat for lesser prairie-chicken (Collins 1992, pp. 2003–2005; Fuhlendorf and Smeins 1999, pp. 732, 737).

Following Euro-American settlement, fire suppression allowed trees, such as eastern red cedar, to begin invading or encroaching upon neighboring grasslands. Implementation of prescribed fire is often the best method to control or preclude tree invasion of grasslands. However, to some landowners and land managers, burning of grassland can be perceived as unnecessary for meeting their management goals, costly and burdensome to enact, undesirable for optimizing production for cattle, and likely to create wind erosion or “blowouts” in sandy soils. Consequently, wildfire suppression is common, and relatively little prescribed burning occurs on private land. Often, prescribed fire is employed only after significant tree invasion has already occurred and landowners consider forage production for cattle to have diminished. Preclusion of woody vegetation encroachment on grasslands

of the southern Great Plains using fire requires implementing fire at a frequency that mimics historical fire frequencies of 2–14 years (Guyette et al. 2012, p. 330) and thus further limits the number of landowners implementing fire in a manner that would truly preclude future encroachment. We have determined that there is a potential for short-term adverse impacts, but we want to encourage the use of prescribed fire on the landscape; thus, we provide an exception for this action below.

Finally, we considered the need for compatibly managed grazing activities that result in the vegetation structure and composition needed to support the lesser prairie-chicken. The habitat needs for the lesser prairie-chicken vary across the range, and grazing can affect these habitats in different ways. It is important that grazing be managed at a given site to account for a variety of factors specific to the local ecological site including past management, soils, precipitation and other factors. This management will ensure that the resulting vegetative composition and structure will support the lesser prairie-chicken. Grazing management that alters the vegetation community to a point where the composition and structure are no longer suitable for lesser prairie-chicken can contribute to habitat loss and fragmentation within the landscape, even though these areas may remain as prairie or grassland. Livestock grazing, however, is not inherently detrimental to the lesser prairie-chicken provided that grazing management results in a plant community with species and structural diversity suitable for the lesser prairie-chicken. When livestock grazing is managed compatibly, it can be an invaluable tool necessary for managing healthy grasslands benefiting the lesser prairie-chicken.

While developing this proposed 4(d) rule, we found that determining how to manage grazing in a manner compatible with the Northern DPS of the lesser prairie chicken is highly site specific based on conditions at the local level; thus, broad determinations within this proposed 4(d) rule would not be beneficial to the species or local land managers. While the 4(d) rule was one approach considered to promote conservation of the Northern DPS of the lesser prairie-chicken by encouraging management of grassland landscapes in ways that support both long-term viability of livestock enterprises, and concurrent conservation of lesser prairie-chicken, we determined that other mechanisms would be more appropriate to support this action. Besides a 4(d) rule, other mechanisms supporting conservation opportunities

exist in other portions of the Endangered Species Act and our policies, including under Federal Agency Actions and Consultations (section 7), Permits (section 10), and Conservation Banking. We recognize the value of compatibly managed grazing for the lesser prairie-chicken, and we look forward to working with our partners and local land managers to ensure there are viable conservation options that provide regulatory coverage for interested landowners.

The provisions of this proposed rule are one of many tools that we would use to promote the conservation of the Northern DPS of the lesser prairie-chicken. This proposed 4(d) rule would apply only if and when we make final the listing of the Northern DPS of the lesser prairie-chicken as a threatened species.

#### *Provisions of the Proposed 4(d) Rule*

This proposed 4(d) rule would provide for the conservation of the Northern DPS of the lesser prairie-chicken by prohibiting the following activities, except as otherwise authorized or permitted: Importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce. We also include the following two exceptions to these prohibitions, which along with the prohibitions, are set forth under Proposed Regulation Promulgation:

(1) Continuation of routine agricultural practices on existing cultivated lands.

This proposed 4(d) rule provides that take of the lesser prairie-chicken will not be prohibited provided the take is incidental to activities that are conducted during the continuation of routine agricultural practices, as specified below, on cultivated lands that are in row crop, seed-drilled untilled crop, hay, or forage production. These lands must meet the definition of cropland as defined in 7 CFR 718.2, and, in addition, must have been cultivated, meaning tilled, planted, or harvested, within the 5 years preceding the proposed routine agricultural practice that may otherwise result in take. Thus, this provision does not include take coverage for any new conversion of grasslands into agriculture.

Lesser prairie-chickens travel from native rangeland and CRP lands, which provide cover types that support lesser prairie-chicken nesting and brood-rearing, to forage within cultivated

fields supporting small grains, alfalfa, and hay production. Lesser prairie-chickens also maintain lek sites within these cultivated areas, and they may be present during farming operations. Thus, existing cultivated lands, although not a native habitat type, may provide food resources for lesser prairie-chickens.

Routine agricultural activities covered by this provision include:

(a) Plowing, drilling, disking, mowing, or other mechanical manipulation and management of lands.

(b) Routine activities in direct support of cultivated agriculture, including replacement, upgrades, maintenance, and operation of existing infrastructure such as buildings, irrigation conveyance structures, fences, and roads.

(c) Use of chemicals in direct support of cultivated agriculture when done in accordance with label recommendations.

We do not view regulating these activities as necessary and advisable for the conservation of the lesser prairie-chicken as, while there may be limited use for foraging and lekking sites, these lands do not have the ability to support the complete life-history needs of the species and thus are not considered habitat. We are proposing that none of the provisions in 50 CFR 17.31 would apply to actions that result from activities associated with the continuation of routine agricultural practices, as specified above, on existing cultivated lands that are in row crop, seed-drilled untilled crop, hay, or forage production. These lands must meet the definition of cropland as defined in 7 CFR 718.2, and, in addition, must have been cultivated, meaning tilled, planted, or harvested, within the previous 5 years.

(2) Implementation of prescribed fire for the purposes of grassland management.

This proposed 4(d) rule provides that take of the lesser prairie-chicken will not be prohibited provided the take is incidental to activities that are conducted during the implementation of prescribed fire, as specified below, for the purpose of grassland and shrubland management.

As discussed in the Background section of this proposed 4(d) rule, fire plays an essential role in maintaining healthy grasslands and shrublands, preventing woody vegetation encroachment, and encouraging the structural and species diversity of the plant community required by the lesser prairie-chicken. The intensity, scale, and frequency of fire regimes in the southern Great Plains has been drastically altered due to human

suppression of wildfire resulting in widespread degradation and loss of grasslands. While fire plays an important role, potential exists for some short-term negative impacts to the lesser prairie-chicken while implementing prescribed fire. The potential impacts depend upon what time of the year the fire occurs, extent of habitat burned and burn severity including, but are not limited to, disturbance of individuals, destruction of nests, and impacts to available cover for nesting and concealment from predators.

Prescribed fire activities covered by this provision include:

(a) Construction and maintenance of fuel breaks.

(b) Planning needed for application of prescribed fire.

(c) Implementation of the fire and all associated actions.

(d) Any necessary monitoring and followup actions.

Implementation of prescribed fire is essential to managing for healthy grasslands and shrublands, but currently use of prescribed fire is minimal or restricted to frequent use in small local areas within the range of the lesser prairie-chicken. While prescribed fire has the potential for some limited negative short-term effects on the lesser prairie-chicken, we have concluded that the long-term benefits of implementing prescribed fire drastically outweigh the short-term negative effects.

Furthermore, as discussed in the background section of this proposed 4(d) rule, fire is a necessary component for the management and maintenance of healthy grassland for the lesser prairie-chicken. We are proposing that none of the provisions in 50 CFR 17.31 would apply to the implementation of prescribed fire as discussed above.

As discussed above under Summary of Biological Status and Threats, threats including habitat loss, fragmentation, and degradation are affecting the status of the Northern DPS of the lesser prairie-chicken. A range of activities have the potential to affect the Northern DPS of the lesser prairie-chicken, including actions that would result in the unauthorized destruction or alteration of the species' habitat. Such activities could include, but are not limited to: The removal of native shrub or herbaceous vegetation by any means for any infrastructure construction project or direct conversion of native shrub or herbaceous vegetation to another land use; actions that would result in the long-term alteration of preferred vegetative characteristics of lesser prairie-chicken habitat, particularly those actions that would cause a reduction or loss in the native

invertebrate community within those habitats.

Such activities could include, but are not limited to, incompatible livestock grazing, the application of herbicides or insecticides, and seeding of nonnative plant species that would compete with native vegetation for water, nutrients, and space; and actions that would result in lesser prairie-chicken avoidance of an area during one or more seasonal periods. Such activities could include, but are not limited to, the construction of vertical structures such as power lines, communication towers, buildings, infrastructure to support energy development, roads, and other anthropogenic features; motorized and nonmotorized recreational use; and activities such as well drilling, operation, and maintenance, which would entail significant human presence, noise, and infrastructure; and actions, intentional or otherwise, that would result in the destruction of eggs or active nests or cause mortality or injury to chicks, juveniles, or adult lesser prairie-chickens. Regulating these activities would slow the rate of habitat loss, fragmentation, and degradation and decrease synergistic, negative effects from other threats.

Under the Act, “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulation at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating take would help slow the rate of habitat loss, fragmentation, and degradation and decrease synergistic, negative effects from other threats.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

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 Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Services shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve the Northern DPS of the lesser prairie-chicken that may result in otherwise prohibited take without additional authorization.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the Northern DPS of the lesser prairie-chicken. 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).

### 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.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Designation also does not allow the government or public to access private lands, nor does designation require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement “reasonable and prudent alternatives” to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas

within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific occupied areas, we focus on the specific features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for

Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

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

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

species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

#### *Prudence Determination*

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

As discussed earlier in this document, there is currently no imminent threat of collection or vandalism identified under Factor B for either the Northern DPS or the Southern DPS of the lesser prairie-chicken, and identification and mapping of critical habitat is not expected to initiate any such threat. In our SSA report and proposed listing determination for both the Northern and Southern DPSs, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to the two DPSs and that the threat in some way can be addressed by section 7(a)(2) consultation measures. The two DPSs occur wholly in the jurisdiction of the United States, and we are able to identify areas that meet the definition of critical habitat. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met and because there are no other circumstances the Secretary has

identified for which this designation of critical habitat would be not prudent, we have determined that the designation of critical habitat is prudent for both DPSs of the lesser prairie-chicken.

#### Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the Northern DPS and the Southern DPS of lesser prairie-chicken is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

- (i) Data sufficient to perform required analyses are lacking, or
- (ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of “critical habitat.”

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located and data that would be needed to perform other required analyses. A careful assessment of the economic impacts that may occur due to a critical habitat designation is not yet complete, and we are in the process of working with the States and other partners in acquiring the complex information needed to perform that assessment. Because the information sufficient to perform a required analysis of the impacts of the designation is lacking, we therefore conclude that the designation of critical habitat for both the Southern DPS and the Northern DPS of the lesser prairie-chicken to be not determinable at this time. The Act allows the Service an additional year to publish a critical habitat designation that is not determinable at the time of listing (16 U.S.C. 1533(b)(6)(C)(ii)).

#### Public Hearings

We have scheduled two public informational meeting with public hearings on this proposed rule for the lesser prairie-chicken. We will hold the public informational meetings and public hearings on the dates and at the times listed above under *Public informational meeting and public hearing in DATES*. We are holding the public informational meetings and public hearings via the Zoom online video platform and via teleconference so that participants can attend remotely. For security purposes, registration is required. To listen and view the meeting and hearing via Zoom, listen to the meeting and hearing by telephone, or provide oral public comments at the public hearing by Zoom or telephone,

you must register. For information on how to register, or if you encounter problems joining Zoom the day of the meeting, visit <https://www.fws.gov/southwest/>. Registrants will receive the Zoom link and the telephone number for the public informational meetings and public hearings. If applicable, interested members of the public not familiar with the Zoom platform should view the Zoom video tutorials (<https://support.zoom.us/hc/en-us/articles/206618765-Zoom-video-tutorials>) prior to the public informational meetings and public hearings.

The public hearings will provide interested parties an opportunity to present verbal testimony (formal, oral comments) regarding this proposed rule. While the public informational meetings will be an opportunity for dialogue with the Service, the public hearings are not. They are a forum for accepting formal verbal testimony. In the event there is a large attendance, the time allotted for oral statements may be limited. Therefore, anyone wishing to make an oral statement at the public hearings for the record is encouraged to provide a prepared written copy of their statement to us through the Federal eRulemaking Portal, or U.S. mail (see **ADDRESSES**, above). There are no limits on the length of written comments submitted to us. Anyone wishing to make an oral statement at the public hearings must register before the hearing (<https://www.fws.gov/southwest/>). The use of a virtual public hearing is consistent with our regulations at 50 CFR 424.16(c)(3).

#### 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 regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### 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 solicited information from all of the Tribes within the entire range of the lesser prairie-chicken to inform the development of the SSA report, and notified Tribes of our upcoming proposed listing determination. We also provided these Tribes the opportunity to review a draft of the SSA report and provide input prior to making our proposed determination on the status of the lesser prairie-chicken but did not receive any responses. We will continue to coordinate with affected Tribes throughout the listing process as appropriate.

#### References Cited

A complete list of references cited in this rulemaking is available on the internet at <http://www.regulations.gov> and upon request from the Arlington Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Authors

The primary authors of this proposed rule are the staff members of the Fish

and Wildlife Service's Species Assessment Team and the Arlington 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) amend the table by adding an entry for “Prairie-chicken,

lesser [Northern DPS]” and an entry for “Prairie-chicken, lesser [Southern DPS]” in alphabetical order under **BIRDS** to read as follows:

#### § 17.11 Endangered and threatened wildlife.

\* \* \* \* \*

(h) \* \* \*

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
<b>BIRDS</b>				
*	*	*	*	*
Prairie-chicken, lesser [Northern DPS].	<i>Tympanuchus pallidicinctus</i> .....	U.S.A. (All lesser prairie-chickens north of a line starting at 37.9868 N, 105.0133 W, and ending at 31.7351 N, 98.3773 W, NAD83; see map at § 17.41(k)).	T	[Federal Register citation when published as a final rule]; 50 CFR 17.41(k). <sup>4d</sup>
Prairie-chicken, lesser [Southern DPS].	<i>Tympanuchus pallidicinctus</i> .....	U.S.A. (All lesser prairie-chickens north of a line starting at 37.9868 N, 105.0133 W, and ending at 31.7351 N, 98.3773 W, NAD83; see map at § 17.41(k)).	E	[Federal Register citation when published as a final rule].
*	*	*	*	*

- 3. Amend § 17.41 by adding paragraph (k) to read as follows:

#### § 17.41 Special rules—birds.

\* \* \* \* \*

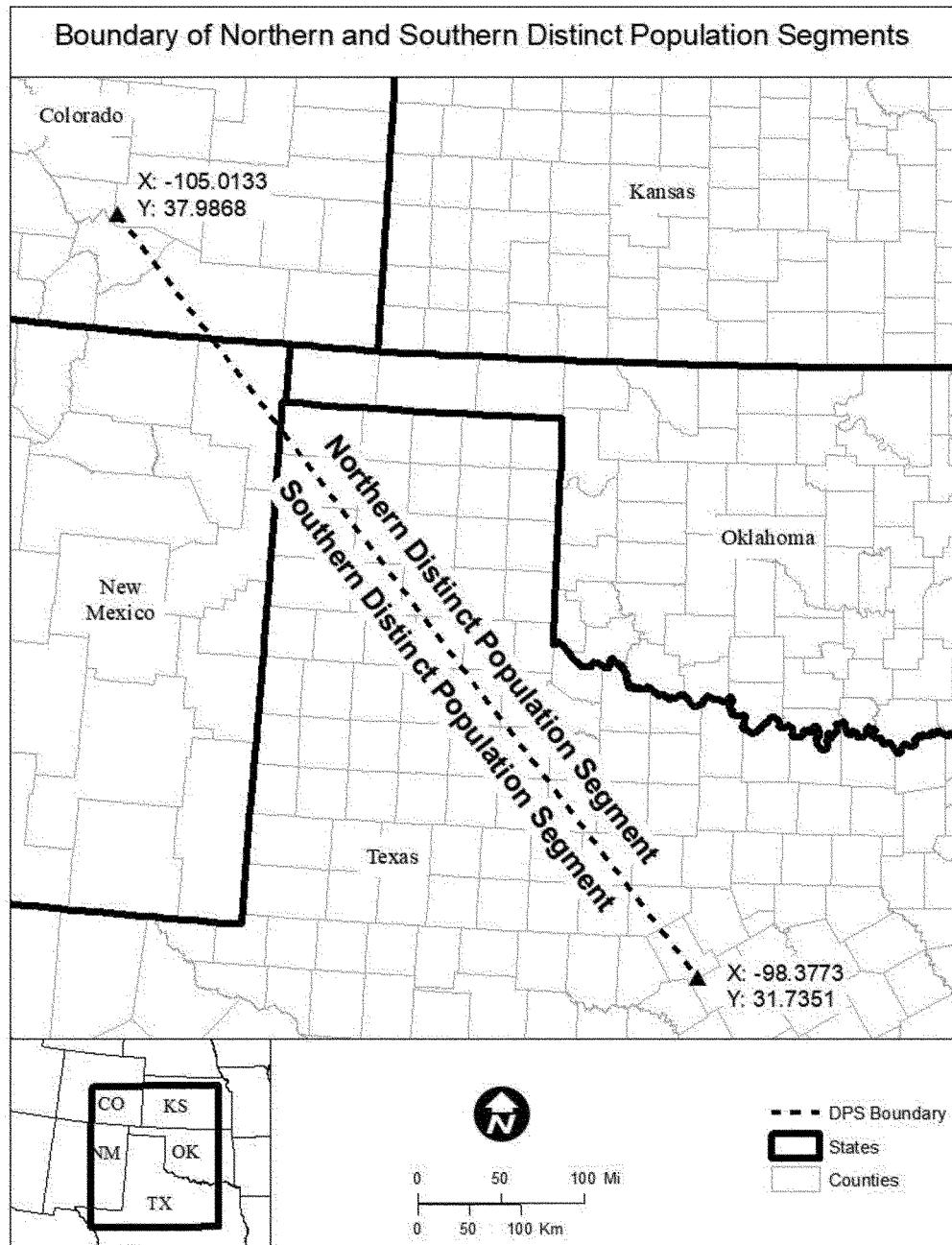
(k) Lesser prairie-chicken (*Tympanuchus pallidicinctus*), Northern

Distinct Population Segment (DPS). The Northern DPS of the lesser prairie-chicken pertains to lesser prairie-chickens found northeast of a line starting in Colorado at 37.9868 N, 105.0133 W, going through northeastern

New Mexico, and ending in Texas at 31.7351 N, 98.3773 W, NAD83, as shown in the map:

**BILLING CODE 4333-15-P**

Figure 1 to paragraph (k)



(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the Northern DPS of the lesser prairie-chicken. 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 a commercial activity, as set forth at § 17.21(e) for endangered wildlife.
- (v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

- (i) Conduct activities as authorized by a permit under § 17.32.
- (ii) Take, as set forth at § 17.21(c)(2) through (c)(4) for endangered wildlife.
- (iii) Take as set forth at § 17.31(b).
- (iv) Take incidental to an otherwise lawful activity caused by:
  - (A) Continuation of routine agricultural practices on existing cultivated lands, including:

(1) Plowing, drilling, disking, mowing, or other mechanical manipulation and management of lands;

(2) Routine activities in direct support of cultivated agriculture, including replacement, upgrades, maintenance, and operation of existing infrastructure such as buildings, irrigation conveyance structures, fences, and roads; and

(3) Use of chemicals in direct support of cultivated agriculture when done in

accordance with label recommendations.

(B) Implementation of prescribed fire for the purposes of grassland management, including:

- (1) Construction and maintenance of fuel breaks;
- (2) Planning needed for application of prescribed fire;
- (3) Implementation of the fire and all associated actions; and
- (4) Any necessary monitoring and followup actions.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

**Martha Williams,**

*Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2021-11442 Filed 5-28-21; 8:45 am]

**BILLING CODE 4333-15-C**

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Tuesday, June 1, 2021

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## TABLE OF EFFECTIVE DATES AND TIME PERIODS—JUNE 2021

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these

dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
June 1	Jun 16	Jun 22	Jul 1	Jul 6	Jul 16	Aug 2	Aug 30
June 2	Jun 17	Jun 23	Jul 2	Jul 7	Jul 19	Aug 2	Aug 31
June 3	Jun 18	Jun 24	Jul 6	Jul 8	Jul 19	Aug 2	Sep 1
June 4	Jun 21	Jun 25	Jul 6	Jul 9	Jul 19	Aug 3	Sep 2
June 7	Jun 22	Jun 28	Jul 7	Jul 12	Jul 22	Aug 6	Sep 7
June 8	Jun 23	Jun 29	Jul 8	Jul 13	Jul 23	Aug 9	Sep 7
June 9	Jun 24	Jun 30	Jul 9	Jul 14	Jul 26	Aug 9	Sep 7
June 10	Jun 25	Jul 1	Jul 12	Jul 15	Jul 26	Aug 9	Sep 8
June 11	Jun 28	Jul 2	Jul 12	Jul 16	Jul 26	Aug 10	Sep 9
June 14	Jun 29	Jul 6	Jul 14	Jul 19	Jul 29	Aug 13	Sep 13
June 15	Jun 30	Jul 6	Jul 15	Jul 20	Jul 30	Aug 16	Sep 13
June 16	Jul 1	Jul 7	Jul 16	Jul 21	Aug 2	Aug 16	Sep 14
June 17	Jul 2	Jul 8	Jul 19	Jul 22	Aug 2	Aug 16	Sep 15
June 18	Jul 6	Jul 9	Jul 19	Jul 23	Aug 2	Aug 17	Sep 16
June 21	Jul 6	Jul 12	Jul 21	Jul 26	Aug 5	Aug 20	Sep 20
June 22	Jul 7	Jul 13	Jul 22	Jul 27	Aug 6	Aug 23	Sep 20
June 23	Jul 8	Jul 14	Jul 23	Jul 28	Aug 9	Aug 23	Sep 21
June 24	Jul 9	Jul 15	Jul 26	Jul 29	Aug 9	Aug 23	Sep 22
June 25	Jul 12	Jul 16	Jul 26	Jul 30	Aug 9	Aug 24	Sep 23
June 28	Jul 13	Jul 19	Jul 28	Aug 2	Aug 12	Aug 27	Sep 27
June 29	Jul 14	Jul 20	Jul 29	Aug 3	Aug 13	Aug 30	Sep 27
June 30	Jul 15	Jul 21	Jul 30	Aug 4	Aug 16	Aug 30	Sep 28