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Memorandum of June 4, 2021

The President

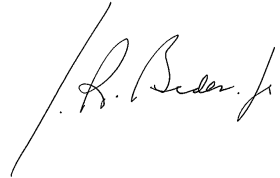
2020 Unified Command Plan

Memorandum for the Secretary of Defense

Pursuant to my authority as Commander in Chief, I hereby rescind direction dated January 13, 2021, to the Department of Defense to begin drafting Change 1 to the 2020 Unified Command Plan to reassign the responsibility for Greenland from United States European Command to United States Northern Command.

Consistent with title 10, United States Code, section 161(b)(2) and title 3, United States Code, section 301, you are directed to notify the Congress on my behalf.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, June 4, 2021

[FR Doc. 2021-12221

Filed 6-8-21; 8:45 am]

Billing code 5001-06-P

Rules and Regulations

Federal Register

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

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3

[Docket No. USDA–2020–0011]

RIN 0503–AA72

Civil Monetary Penalty Inflation Adjustments for 2021; Correction

AGENCY: Office of the Secretary, U.S. Department of Agriculture (USDA).

ACTION: Correcting amendment.

SUMMARY: On May 10, 2021, we published a final rule amending the U.S. Department of Agriculture's civil monetary penalty regulations by making inflation adjustments as mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. We are correcting an error that appeared in that final rule.

DATES: Effective June 9, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen O'Neill, Office of Budget and Program Analysis, USDA, 1400 Independence Avenue SW, Washington, DC 20250–1400, (202) 720–0038.

SUPPLEMENTARY INFORMATION: In a final rule published and effective on June 17, 2020 (85 FR 36670–36714), we amended the U.S. Department of Agriculture's (USDA's) debt management regulations in 7 CFR part 3. As part of that final rule, we revised the regulations in § 3.91 to update the amount of civil monetary penalties that may be levied by USDA agencies to reflect inflationary adjustments for 2020 as required by the 2015 Civil Penalties Act.

In making those updates, we inadvertently introduced an error into paragraph (b)(2)(xiv) of § 3.91. Prior to the effective date of the June 2020 final rule, that paragraph had specified that the civil penalty for a violation of the Commercial Transportation of Equine for Slaughter Act, 7 U.S.C. 1901 note, and its implementing regulations in 9 CFR part 88, as set forth in 9 CFR 88.6,

has a maximum of \$5,000. The June 2020 final rule should have adjusted that maximum amount to \$5,088 consistent with the guidance contained in Office of Management and Budget memorandum M–20–05, which provided a cost-of-living adjustment multiplier for 2020 of 1.01764. However, due to a drafting error, the amount that appeared was \$812.

That error carried over into our 2021 adjustments, which were published and effective on May 10, 2021 (86 FR 24699–24703), in which we applied the 2021 cost-of-living adjustment multiplier (1.01182) to the incorrect \$812 figure to arrive at an adjusted penalty of \$822.

To address these errors, we are amending 7 CFR 3.91(b)(2)(xiv) to replace the incorrect penalty amount with the correct amount, which is \$5,148 (*i.e.*, the correct 2020 figure of \$5,088 times the 2021 multiplier).

List of Subjects in 7 CFR Part 3

Administrative practice and procedure, Claims, Government employees, Income taxes, Loan programs-agriculture, Penalties, Reporting and recordkeeping requirements, Wages.

Accordingly, we are amending 7 CFR part 3 as follows:

PART 3—DEBT MANAGEMENT

Subpart I—Adjusted Civil Monetary Penalties

- 1. The authority citation for part 3, subpart I, continues to read as follows:

Authority: 28 U.S.C. 2461 note.

§ 3.91 [Amended]

- 2. In § 3.91, paragraph (b)(2)(xiv) is amended by removing the amount “\$822” and adding the amount “\$5,148” in its place.

John Rapp,

Acting Director, Office of Budget and Program Analysis.

[FR Doc. 2021–12110 Filed 6–8–21; 8:45 am]

BILLING CODE 3410–90–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 760

[Docket No. 210528–0118]

RIN 0694–AI48

Export Administration Regulations: Termination of United Arab Emirates Participation in the Arab League Boycott of Israel

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to reflect the formal termination by the United Arab Emirates (UAE) of its participation in the Arab League Boycott of Israel. Specifically, in recognition of the UAE's August 16, 2020 issuance of Federal Decree-Law No. 4 of 2020, certain requests for information, action or agreement from the UAE, which were presumed to be boycott-related if made prior to August 16, 2020, would not be presumed to be boycott-related if made following that date, and thus would not be prohibited or reportable under the EAR. Accordingly, BIS adds an interpretation to the Restrictive Trade Practices or Boycotts regulations of the EAR, which sets forth BIS's view that the prohibitions and reporting requirements contained in the EAR's antiboycott provisions do not apply to such requests from the UAE made after August 16, 2020.

DATES: This rule is effective June 8, 2021.

FOR FURTHER INFORMATION CONTACT: Cathleen Ryan, Director, Office of Antiboycott Compliance, Bureau of Industry and Security, U.S. Department of Commerce, by email at OAC.WebQueries@bis.doc.gov or OACINQUIRIES@bis.doc.gov, or by phone at 202–482–2381.

SUPPLEMENTARY INFORMATION:

Background

The Office of Antiboycott Compliance (OAC) administers and enforces the antiboycott provisions set forth in part 760 (Restrictive Trade Practices and Boycotts) of the Export Administration

Regulations (EAR) (15 CFR parts 730 through 774). These antiboycott provisions discourage, and in certain circumstances prohibit, United States persons from taking specific actions in furtherance or support of an unsanctioned foreign boycott by a country against a country friendly to the United States, including complying with certain requests to provide information about business relationships with a boycotted country or with blacklisted persons or to refuse to do business with certain persons for boycott-related reasons. Pursuant to part 760 of the EAR, the receipt of such requests may be reportable to OAC.

In connection with an agreement between the United Arab Emirates (UAE) and Israel establishing full diplomatic and commercial relations and normalization (the “Abraham Accords”), on August 16, 2020, the UAE issued Federal Decree-Law No. 4 of 2020, which repealed Federal Law No. 15 of 1972 Concerning the Arab League Boycott of Israel (“August 16, 2020 decree”), thereby formally ending the UAE’s participation in the Arab League Boycott of Israel.

In this final rule, the Bureau of Industry and Security (BIS) amends part 760 of the EAR to add an Interpretation that reflects the UAE’s formal termination (through the issuance of the August 16, 2020 decree) of its participation in the Arab League Boycott of Israel. In making this amendment, BIS has also taken into account actions that the UAE Government has undertaken to implement, in policy and practice, the August 16, 2020 decree. As set forth in this Interpretation, which will appear as new Supplement No. 17 to part 760 of the EAR, certain requests for information, action or agreement from the UAE that were presumed to be boycott-related prior to August 16, 2020 would not be presumed to be boycott-related if issued after August 16, 2020, and thus would not be subject to the prohibitions or reporting requirements of part 760 of the EAR. Further, the Interpretation reminds United States persons that requests that are on their face boycott-related or that are for action obviously in furtherance or support of an unsanctioned foreign boycott are subject to part 760 of the EAR, irrespective of the country of origination.

Export Control Reform Act of 2018

On August 13, 2018, President Donald J. Trump 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).

Part II of ECRA contains the Anti-Boycott Act of 2018. 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, distribute 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 as not significant for purposes of Executive Order 12866.

2. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

3. Pursuant to section 1762 of the Export Control Reform Act of 2018 (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.

4. 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. This rule reflects a policy development involving the United Arab Emirates that advances the U.S. Government’s foreign policy and national security. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

5. Notwithstanding any other provision of law, no person may be 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.*), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves a collection currently approved by OMB under control number 0694–0012, Report of Requests for Restrictive Trade Practice or Boycott—Single or Multiple Transactions. The collection carries a burden estimate of 60 to 90 minutes for a manual or electronic submission for a total burden estimate of 482 hours. BIS expects the burden

hours associated with this collection to decrease with the publication of this rule.

List of Subjects in 15 CFR Part 760

Exports, Reporting and recordkeeping requirements, Trade practices.

Accordingly, part 760 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 760—RESTRICTIVE TRADE PRACTICES OR BOYCOTTS

■ 1. The authority citation for part 760 is revised 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.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 2. Add supplement no. 17 to part 760 to read as follows:

Supplement No. 17 to Part 760—Interpretation

Pursuant to the agreement between the United Arab Emirates (UAE) and Israel establishing diplomatic and commercial relations (the “Abraham Accords”), on August 16, 2020, the UAE issued Federal Decree-Law No. 4 of 2020, abolishing Federal Law No. 15 of 1972 Concerning the Arab League Boycott of Israel, thereby formally terminating participation by the UAE in the Arab League Boycott of Israel as of that date.

On the basis of this action, it is the Department’s position that certain requests for information, action or agreement from the UAE, which were presumed to be boycott-related under this part of the EAR if issued prior to August 16, 2020, would not be presumed to be boycott-related if issued after August 16, 2020, and thus would not be prohibited or reportable under this part of the EAR.

For example, a request from the UAE that an exporter certify that the vessel on which it is shipping its goods is eligible to enter UAE ports was formerly presumed to be a boycott-related request under this part of the EAR with which the exporter could not comply because the UAE had a boycott law in force against Israel. Such a request from the UAE made after August 16, 2020, would no longer be presumed to be boycott-related because the underlying boycott requirement/basis for the certification was eliminated as of August 16, 2020. Similarly, a U.S. company would not be prohibited from complying with a request made by UAE government officials after August 16, 2020, to furnish the place of birth of employees the company is seeking to take to the UAE because there is no underlying

UAE government boycott law or policy that would give rise to a presumption that the request was boycott-related.

U.S. persons are reminded that requests that are on their face boycott-related or that are for action obviously in furtherance or support of an unsanctioned foreign boycott are subject to this part of the EAR, irrespective of the country of origination. For example, requests containing references to “blacklisted companies,” “Israel boycott list,” “non-Israeli goods,” or other phrases or words indicating a boycott purpose would be subject to the appropriate provisions of the Department’s antiboycott regulations in this part.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2021-12125 Filed 6-7-21; 4:15 pm]

BILLING CODE 3510-33-P

DEPARTMENT OF THE TREASURY

31 CFR Part 50

Terrorism Risk Insurance Program; Updated Regulations in Light of the Terrorism Risk Insurance Program Reauthorization Act of 2019, and for Other Purposes

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing this final rule to implement technical changes to the Terrorism Risk Insurance Program (TRIP or Program) rules in response to the Terrorism Risk Insurance Program Reauthorization Act of 2019. In addition, Treasury is issuing this final rule to: Clarify the manner in which Treasury will calculate “property and casualty insurance losses” for purposes of considering certification of an act of terrorism, and “insured losses” when administering the financial sharing mechanisms under the Program, including the Program Trigger and Program Cap; incorporate into the Program rules the prior guidance provided by Treasury in connection with stand-alone cyber insurance under the Program; and provide updated links to additional information found on the Program’s website relating to administration of the Program. The changes were published in proposed form for public comment by Treasury on November 10, 2020.

DATES: This rule is effective July 12, 2021.

FOR FURTHER INFORMATION CONTACT:

Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202-622-2922, Lindsey Baldwin, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202-622-3220, or Daniel McKnight, Policy Analyst, 202-622-7009.

SUPPLEMENTARY INFORMATION:

I. Background

The Terrorism Risk Insurance Act of 2002 (as amended, the Act or TRIA)¹ was enacted on November 26, 2002, following the attacks of September 11, 2001, to address disruptions in the market for terrorism risk insurance, help ensure the continued availability and affordability of commercial property and casualty insurance for terrorism risk, and allow for the private markets to stabilize and build insurance capacity to absorb any future losses for terrorism events.² TRIA requires insurers to “make available” terrorism risk insurance for commercial property and casualty losses resulting from certified acts of terrorism (termed “insured losses” under TRIA), and provides for shared public and private compensation for such insured losses. The Program has been reauthorized four times, most recently by the Terrorism Risk Insurance Program Reauthorization Act of 2019 (2019 Reauthorization Act).³

The Secretary of the Treasury (Secretary) administers the Program, with the assistance of the Federal Insurance Office (FIO).⁴ To assist insurers, policyholders, and other interested parties in understanding and complying with the requirements of the Act, Treasury has issued regulations implementing the Program (the Program Rules).⁵ In some instances, Treasury has also issued interim guidance that may be relied upon by insurers until superseded by any regulations. Of

relevance to this final rule, in December 2016, Treasury issued interim guidance confirming that certain stand-alone cyber coverage written in a TRIP-eligible line of insurance was within the scope of the Program, such that insurers were obligated to adhere to the “make available” and disclosure requirements under TRIA for such coverage (Cyber Guidance).⁶

Treasury proposed the changes in this final rule in a November 2020 notice of proposed rulemaking (the November 2020 NPRM).⁷ In response to the reauthorization of the Program for an additional seven years under the 2019 Reauthorization Act, Treasury proposed certain technical changes to align the Program Rules to the new dates for expiration of the Program and schedule for recoupment of any payments. Treasury also proposed in the November 2020 NPRM certain definitional changes to confirm and clarify the guidance on cyber coverage in this area that Treasury provided in its December 2016 Cyber Guidance. In addition, Treasury proposed in the November 2020 NPRM several changes, in part in response to a report by the Government Accountability Office (GAO), addressing certain sources of risk and uncertainty related to the Program.⁸ In its report, GAO indicated that, based upon its engagement with stakeholders during the preparation of the report, some uncertainty may exist about how Treasury would apply policyholder retention amounts in calculating “property and casualty insurance losses” versus “insured losses” to determine the Program certification threshold, Program Trigger, and Program Cap.⁹ GAO recommended that Treasury provide further clarification to “prevent uncertainty in the insurance market and potential litigation following a terrorist event that that could delay insurance payments and economic recovery.”¹⁰ Treasury proposed certain

¹ Public Law 107-297, 116 Stat. 2322, codified at 15 U.S.C. 6701 note. Because the provisions of TRIA (as amended) appear in a note instead of particular sections of the U.S. Code, the provisions of TRIA are identified by the sections of the law.

² TRIA sec. 101(b).

³ See Terrorism Risk Insurance Extension Act of 2005, Public Law 109-144, 119 Stat. 2660; Terrorism Risk Insurance Program Reauthorization Act of 2007, Public Law 110-160, 121 Stat. 1839; Terrorism Risk Insurance Program Reauthorization Act of 2015, Public Law 114-1, 129 Stat. 3; Terrorism Risk Insurance Program Reauthorization Act of 2019, Public Law 116-94, 133 Stat. 2534.

⁴ 31 U.S.C. 313(c)(1)(D).

⁵ See 31 CFR part 50. Treasury summarized the history of prior rulemakings in connection with the Program in a 2016 proposed rulemaking proposing rule changes to implement the 2015 Reauthorization Act. See 81 FR 18950, 18950-91 (Apr. 1, 2016), <https://www.federalregister.gov/documents/2016/04/01/2016-06920/terrorism-risk-insurance-program>.

⁶ Guidance Concerning Stand-Alone Cyber Liability Insurance Policies Under the Terrorism Risk Insurance Program, 81 FR 95312 (Dec. 27, 2016), <https://www.federalregister.gov/documents/2016/12/27/2016-31244/guidance-concerning-stand-alone-cyber-liability-insurance-policies-under-the-terrorism-risk>.

⁷ Terrorism Risk Insurance Program; Updated Regulations in Light of the Terrorism Risk Insurance Program Reauthorization Act of 2019, and for Other Purposes, 85 FR 71588 (Nov. 10, 2020), <https://www.federalregister.gov/documents/2020/11/10/2020-24522/terrorism-risk-insurance-program-updated-regulations-in-light-of-the-terrorism-risk-insurance>.

⁸ GAO, *Terrorism Risk Insurance: Program Changes Have Reduced Federal Fiscal Exposure* (GAO-20-348) (Apr. 2020), <https://www.gao.gov/assets/710/706243.pdf>.

⁹ *Id.* at 18-19.

¹⁰ *Id.* at 19.

rule changes in the November 2020 NPRM designed to clarify how Treasury will apply these terms to effectuate the intent and goals of the Program. Finally, Treasury proposed updating certain references to the TRIP website in the Program Rules to the current website URLs.

II. The Proposed Rule

The November 2020 NPRM proposed various technical changes to the Program Rules to account for the extension of the Program to December 31, 2027 as provided for in the 2019 Reauthorization Act.¹¹ In addition, the November 2020 NPRM proposed additional substantive changes to the Program Rules by (1) incorporating, through certain definitional changes, Treasury's prior guidance respecting the inclusion of stand-alone cyber liability within the Program; and (2) making certain revisions to definitional language concerning "property and casualty insurance losses" (for purposes of certification of an "act of terrorism") and "insured loss" under the Program, which governs various financial mechanics under the Program, including calculation of an insurer's claim for the Federal Share of Compensation, the Program Trigger and the Program Cap. In general terms, the proposed changes in the November 2020 NPRM involving "property and casualty insurance losses" and "insured loss" were intended to specify that amounts for which the policyholder is responsible (whether on account of policy exclusions or deductible or retention amounts) will be included within "property and casualty insurance losses," but excluded from "insured loss" for purposes of calculating payment amounts under the Program, as well as for determining whether the Program Trigger and Program Cap have been satisfied.¹² The November 2020 NPRM also updates various URL links to the Program website, which contains further explanatory information concerning the Program.

¹¹ In addition to seeking comments concerning the proposed rule, the November 2020 NPRM sought comments from the public concerning a number of other matters under the Program concerning the certification process and the participation of captive insurers in the Program. Treasury received a number of comments addressing these issues, which it is continuing to review in connection with potential future proposed rules, reports, or other actions involving the Program.

¹² See generally November 2020 NPRM, 85 FR at 71589–90.

III. Summary of Comments and Final Rule

Treasury received five comments addressing the proposed rule changes identified in the November 2020 NPRM.¹³ None of the comments received objected to the proposed technical rule changes in response to the 2019 Reauthorization Act. In addition, none of the comments objected to Treasury's proposed codification of its December 2016 Cyber Guidance or the provisions updating Treasury's website references.¹⁴ Those proposed rules, accordingly, are being finalized as proposed.

Some commenters addressed Treasury's proposed rule changes regarding the interpretation of the terms "property and casualty insurance losses" for purposes of the certification process, and "insured loss" for purposes of the sharing mechanisms under the Program. Treasury's proposed rules clarified that "property and casualty

¹³ See Comment from Centers for Better Insurance, LLC (Dec. 3, 2020) (CBI Comments); Comment from Lloyd's of London (Jan. 8, 2021) (Lloyd's Comments); Comment from National Association of Mutual Insurance Companies (Jan. 11, 2021) (NAMIC Comments); Comment from American Property Casualty Insurance Association (Jan. 11, 2021) (APCIA Comments); and Comment from the Coalition to Insure Against Terrorism and the Council of Insurance Agents and Brokers (Jan. 11, 2021) (CIAT/CIAB Comments), all available at <https://www.regulations.gov/document/TREAS-TRIP-2020-0022-0001/comment>. As noted above, Treasury solicited and received additional comments concerning certification and captive insurer issues, which Treasury will not address in this final rule.

¹⁴ See Lloyd's Comments at 1 ("Lloyd's is grateful to FIO for issuing its guidance relating to cyber liability lines in 2016, and for now codifying that guidance in the proposed rule."); APCIA Comments at 3 ("The NPRM proposes to codify Treasury's previous guidance on cyber stand-alone policies. In the NPRM, Treasury confirmed APCIA's understanding of the intent of that previous guidance, i.e., to make clear that any cyber risk reported on Line 17—Other Liability on insurers' annual state statutory financial statements is considered to be covered by TRIA unless the risk is statutorily excluded. Therefore, APCIA supports Treasury's proposed rulemaking in this regard."); NAMIC Comments at 2 ("The NPRM proposes to codify Treasury's previous guidance on stand-alone cyber insurance policies to make clear that any cyber risk reported on Line 17—Other Liability on insurers' annual state statutory financial reporting statements is considered covered by TRIA unless the risk is statutorily excluded. NAMIC believes this is an appropriate interpretation and has no issue in this regard."); and CIAT/CIAB Comments at 3 ("In December 2016, Treasury issued guidance relating to whether certain standalone cyber coverage written in a TRIP-eligible line of insurance was within the scope of the TRIA program, such that insurers were obligated to adhere to the 'make available' and disclosure requirements under TRIA for such coverage. 81 FR 95312. We thank FIO for codifying this previously issued guidance in the current NPRM, as greater clarity on the relationship between cyberterrorism and TRIA is always appreciated, and welcome future clarifying guidance related to cyber insurance, particularly as it relates to the certification of cyber events.").

insurance losses," for certification purposes, would include loss amounts ultimately sustained by the policyholder (on account of deductibles, retentions, or other mechanisms); however, an "insured loss" (a term used in relation to payments under the Program rather than the certification process) would not include such amounts, because payments in connection with the Program are limited to loss amounts that are actually paid (or in some cases to be paid) by insurers.¹⁵ Treasury explained that the certification analysis looks to the size of the event in question, so it is appropriate to consider all amounts associated with TRIP-eligible policies in connection with that inquiry to determine whether the event is of sufficient size to warrant potential consideration for certification purposes. By contrast, since the term "insured loss" measures amounts payable under the Program, and payments under the Program are made only to insurers, Treasury observed that "insured loss" cannot include losses not paid by insurers to ensure that the financial mechanisms underlying the Program operate as intended.¹⁶

One commenter, while not expressing a preference for the elements to be included within the two terms ("property and casualty insurance losses" and "insured loss"), did suggest that these terms should have the same interpretation for reasons of administrative efficiency.¹⁷ This commenter also noted that it might be difficult in some cases to determine the amount of policyholder obligations in connection with a certification inquiry. Another commenter echoed the preference for equating the meaning of the two terms and suggested that policyholder losses should be included in both calculations, as they are commonly considered to be part of

¹⁵ November 2020 NPRM, 85 FR at 71589–90.

¹⁶ *Id.* For example, the Program Cap of \$100 billion limits "insured losses" payable by Treasury and insurers that have met their Program deductible to no more than \$100 billion in any single annual period. See TRIA sec. 103(e)(2); 31 CFR Subpart L (Cap on Annual Liability). If amounts paid by policyholders were included within this calculation, insurers could be excused from payment by the Program on account of amounts paid or absorbed by their policyholders, as distinguished from the combined amount of their own payments and Treasury reimbursement of insurer payments. In an extreme case, if policyholders sustained \$100 billion in losses associated with certified "acts of terrorism" in a given year because of their retained obligations, insurers could be excused of any payments under their policies if those policyholder payments operated to exhaust the \$100 billion Program Cap of "insured losses." Such a result is not consistent with the statutory language of TRIA or the Congressional intent underlying the Program.

¹⁷ See APCIA Comments at 1.

“insured loss” in the insurance industry.¹⁸ Although Treasury values administrative efficiency in the operation of the Program, the two terms are different and address different (although related) matters. “Property and casualty insurance losses” measures the size of the event in question, which logically means any insurance-related loss associated with the event. By contrast, “insured loss” in the context of the Program must be limited to the actual losses of participating insurers, when calculating Federal Share of Compensation payments to participating insurers in the event that payments under the Program are triggered, or when determining the cap on total payments by participating insurers.

Accordingly, Treasury will not apply the same definition where Congress chose not to do so. Furthermore, and for the reasons explained above, including policyholder obligations within the meaning of “insured loss” would potentially permit recoveries by insurers for amounts not paid by such insurers, and excuse insurer payments to some extent on account of policyholder payments through operation of the Program Cap. Treasury therefore declines to interpret “insured loss” in this fashion.

A third commenter offered alternative language to clarify the terms “property and casualty insurance losses” and “insured loss.”¹⁹ Specifically, the commenter suggested that the “property and casualty insurance losses” should only include losses “after the hypothetical application of any terrorism exclusions,” reasoning that such an approach would be more favorable to a policyholder that chose not to take up its insurer’s mandatory offer of terrorism risk insurance under TRIA.²⁰ Treasury declines to adopt the approach proposed by this commenter, which would result in Treasury adopting a definition that would facilitate the provision of coverage to policyholders that consciously declined to purchase it. As Treasury explained in the November 2020 NPRM, the purpose of the certification analysis is to “accurately assess the size of an event” and it therefore focuses on the total economic loss of an event involving TRIP-eligible lines of insurance. When

the Secretary is making a certification decision under the Program, it is important for Treasury to be in a position to identify the relevant size of a particular event that might be considered for certification.²¹ In Treasury’s view, Congress did not intend to limit the Secretary’s ability to certify an event as an act of terrorism in the manner proposed by this commenter. Moreover, the concern identified by this commenter is addressed by the fact that it is within the Secretary’s discretion to consider factors, such as policyholder take-up rates, when determining whether to certify any particular event as an act of terrorism.²²

Regarding the proposed modification to the “insured loss” definition, the same commenter generally approved of the concept behind Treasury’s proposed rule (*i.e.*, that amounts paid or absorbed by the policyholder are not an “insured loss” under the Program). However, this commenter suggested that the “proposed rule could be gamed” by insurers and policyholders by not going far enough in protecting against abuses intended to augment insurer recoveries to the benefit of both participating insurers and their policyholders.²³ However, the commenter recognized that attempting to anticipate “the full range of sophistication, complexity, and ingenuity” that might be deployed to obtain an unfair advantage under the Program may not be possible.²⁴

As Treasury has advised from the outset of the Program, efforts to avoid the requirements of TRIA so as to artificially increase recoveries under the Program are impermissible and will have adverse consequences when Treasury evaluates claims for the Federal Share of Compensation in the event of a certified act of terrorism.²⁵

²¹ Treasury has also considered the additional wording issues identified by this commenter concerning the clarifications proposed to “property and casualty insurance losses” for certification purposes (CBI Comments at 3–4) and finds that they do not warrant revisions to the proposed rule. No new concepts are introduced by Treasury in connection with the Program by referencing terrorism risk insurance. Second, a first-party policyholder remains “responsible for the payment” of losses within an assumed deductible amount, even where it elects not to repair the property at all.

²² See TRIA sec. 102(1); 31 CFR 50.4(b).

²³ See CBI Comments at 5 (“The insurer could issue a policy that simply waives collection of any deductible in the event of a certified act of terrorism.”).

²⁴ *Id.*

²⁵ See, e.g., Interpretative Letter, TRIA-Only Captives/TRIA Section 102(6)(c)/31 CFR 50.5(d) (Mar. 2, 2004) (“We believe that an entity considering forming a captive insurer for stand-alone, single risk terrorism insurance should be strongly cautioned and advised against undertaking

Policy structures and arrangements providing for special treatment where an “act of terrorism” is involved, with the goal of increasing claims for the Federal Share of Compensation, will be subject to significant scrutiny by Treasury in both the claim approval process and any subsequent audit process as contemplated under TRIA.²⁶

Accordingly, Treasury is also adopting without change in this final rule the interpretation of “property and casualty insurance losses” and “insured loss” proposed in the November 2020 NPRM.

IV. Procedural Requirements

Executive Order 12866, “Regulatory Planning and Review.” This final rule is not a significant regulatory action for purposes of Executive Order 12866, “Regulatory Planning and Review,” and thus has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act. Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Treasury must consider whether this rule will have a “significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). In this case, Treasury certifies that this final rule will not have a significant economic impact on a substantial number of small entities, because the changes it implements are largely ministerial and are not expected to impact small entities more than the existing Program regulations.

Paperwork Reduction Act. No collection of information is addressed in this final rule. Treasury continues to submit to OMB for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d), material changes to existing collection requirements.

List of Subjects in 31 CFR Part 50

Insurance, Terrorism.

For the reasons stated in the preamble, 31 CFR part 50 is amended as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

■ 1. The authority citation for part 50 continues to read as follows:

such proposed action if it is doing so in order to avoid the Act’s deductible requirements.”), <https://home.treasury.gov/system/files/311/redactedv.pdf>.

²⁶ TRIA sec. 104(a)(1); 31 CFR Subpart I (Audit and Investigative Procedures). In addition, significant civil penalty provisions apply under TRIA where a participating insurer “[s]ubmits to Treasury fraudulent claims under the Program for insured losses.” TRIA sec. 104(e)(1)(C); 31 CFR 50.82(a)(3).

¹⁸ See NAMIC Comments at 1–2.

¹⁹ See CBI Comments, 3, 6.

²⁰ *Id.* To the extent the Secretary does not certify an event as an act of terrorism under TRIA, policy exclusions for certified acts of terrorism that can be (and typically are) included in a policy where the policyholder fails to accept the mandatory offer under TRIA would not apply, and the policyholder would be entitled to coverage for associated losses assuming all other policy terms and conditions were met.

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322, as amended by Pub. L. 109–144, 119 Stat. 2660, Pub. L. 110–160, 121 Stat. 1839, Pub. L. 114–1, 129 Stat. 3, Pub. L. 116–94, 133 Stat. 2534 (15 U.S.C. 6701 note), Pub. L. 114–74, 129 Stat. 601, Title VII (28 U.S.C. 2461 note).

- 2. Amend § 50.1 by revising paragraph (a) as follows:

§ 50.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to authority in Title I of the Terrorism Risk Insurance Act of 2002, Public Law 107–297, 116 Stat. 2322, as amended by the Terrorism Risk Insurance Extension Act of 2005, Public Law 109–144, 119 Stat. 2660, the Terrorism Risk Insurance Program Reauthorization Act of 2007, Public Law 110–160, 121 Stat. 1839, the Terrorism Risk Insurance Program Reauthorization Act of 2015, Public Law 114–1, 129 Stat. 3, and the Terrorism Risk Insurance Program Reauthorization Act of 2019, Public Law 116–94, 133 Stat. 2534.

* * * * *

- 3. Amend § 50.4 by revising paragraphs (b)(2)(ii) and (n)(3)(iii), adding paragraph (n)(3)(iv) and revising (w)(1) and (2) to read as follows:

§ 50.4 Definitions.

* * * * *

- (b) * * *
(2) * * *

(ii) Property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000. For these purposes, property and casualty insurance losses include any amounts subject to payment under a property and casualty insurance policy, even if the policyholder declined to obtain terrorism risk insurance under the policy or is otherwise ultimately responsible for the payment.

* * * * *

- (n) * * *
(3) * * *

(iii) Payments by an insurer in excess of policy limits; or

(iv) Amounts paid by a policyholder as required under the terms and conditions of property and casualty insurance issued by an insurer.

* * * * *

- (w) * * *

(1) Means commercial lines within only the following lines of insurance from the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14): Line 1—Fire; Line 2.1—Allied Lines; Line 5.1—Commercial Multiple Peril (non-liability portion); Line 5.2—Commercial Multiple Peril (liability portion); Line 8—Ocean Marine; Line 9—Inland Marine; Line 16—Workers'

Compensation; Line 17—Other Liability; Line 18—Products Liability; Line 22—Aircraft (all perils); and Line 27—Boiler and Machinery; a stand-alone cyber liability policy falling within Line 17—Other Liability, is property and casualty insurance, so long as it is not otherwise identified for state reporting purposes as a policy that is not property and casualty insurance, such as professional liability insurance.

- (2) Property and casualty insurance does not include:

* * * * *

- 4. Amend § 50.6 by revising paragraph (b) as follows:

§ 50.6 Special rules for Interim Guidance safe harbors.

* * * * *

(b) For purposes of this section, any Interim Guidance will be posted by Treasury at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program>.

- 5. Amend § 50.16 by revising paragraph (c) to read as follows:

§ 50.16 Use of model forms.

* * * * *

(c) *Definitions.* For purposes of this section, references to NAIC Model Disclosure Form No. 1 and NAIC Model Disclosure Form No. 2 refer to such forms as revised in March 2020, or as subsequently modified by the NAIC, provided Treasury has stated that usage by insurers of the subsequently modified forms is deemed to satisfy the disclosure requirements of the Act and the insurer uses the most current forms, so approved by Treasury, that are available at the time of disclosure. These forms may be found on the Treasury website at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program>.

* * * * *

- 6. Amend § 50.20 by revising paragraphs (b) and (c) to read as follows:

§ 50.20 General mandatory availability requirements.

* * * * *

(b) *Compliance through 2027.* Under section 108(a) of the Act, an insurer must comply with paragraphs (a)(1) and (2) of this section through calendar year 2027.

(c) *Beyond 2027.* Notwithstanding paragraph (a)(2) of this section and § 50.22(a), property and casualty insurance coverage for insured losses does not have to be made available

beyond December 31, 2027, even if the policy period of insurance coverage for losses from events other than acts of terrorism extends beyond that date.

- 7. Amend § 50.30 by revising paragraph (c) to read as follows:

§ 50.30 General participation requirements.

* * * * *

(c) *Identification.* Treasury maintains a list of state residual market insurance entities and state workers' compensation funds at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program>. Procedures for providing comments and updates to that list are posted with the list.

- 8. Amend § 50.74 by revising paragraph (b) as to read as follows:

§ 50.74 Payment of Federal Share of Compensation.

* * * * *

(b) *Payment process.* Payment of the Federal Share of Compensation for insured losses will be made to the insurer designated on the Notice of Deductible Erosion required by § 50.72. An insurer that requests payment of the Federal Share of Compensation for insured losses must receive payment through electronic funds transfer. The insurer must establish either an account for reimbursement as described in paragraph (c) of this section (if the insurer only seeks reimbursement) or a segregated account as described in paragraph (d) of this section (if the insurer seeks advance payments or a combination of advance payments and reimbursement). Applicable procedures will be posted at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program> or otherwise will be made publicly available.

* * * * *

- 9. Amend § 50.83 by revising paragraph (b) to read as follows:

§ 50.83 Adjustment of civil monetary penalty amount.

* * * * *

(b) *Annual adjustment.* The maximum penalty amount that may be assessed under this section will be adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. 2461 note, by January 15 of each year and the updated amount will be posted in the **Federal Register** and on the Treasury website at <https://>

home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program.

* * * * *

■ 10. Amend § 50.90 by revising paragraph (c) to read as follows:

§ 50.90 Mandatory and discretionary recoupment.

* * * * *

(c) If the Secretary imposes a federal terrorism policy surcharge as provided in paragraph (a) of this section, then the required amounts, based upon the extent to which payments for the Federal Share of Compensation have been made by the collection deadlines in section 103(e)(7)(E) of the Act, shall be collected in accordance with such deadlines:

(1) For any act of terrorism that occurs on or before December 31, 2022, the Secretary shall collect all required amounts by September 30, 2024;

(2) For any act of terrorism that occurs between January 1, 2023 and December 31, 2023, the Secretary shall collect 35% of any required amounts by September 30, 2024, and the remainder by September 30, 2029; and

(3) For any act of terrorism that occurs on or after January 1, 2024, the Secretary shall collect all required amounts by September 30, 2029.

■ 11. Amend § 50.103 by revising paragraph (a) as to read as follows:

§ 50.103 Procedure for requesting approval of proposed settlements.

(a) *Submission of notice.* Insurers must request advance approval of a proposed settlement by submitting a notice of the proposed settlement and other required information in writing to the Terrorism Risk Insurance Program Office or its designated representative. The address where notices are to be submitted will be available at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program> following any certification of an act of terrorism pursuant to section 102(1) of the Act.

* * * * *

Dated: June 3, 2021.

Steven E. Seitz,

Director, Federal Insurance Office, performing the Delegable Duties of the Assistant Secretary for Financial Institutions.

[FR Doc. 2021-12014 Filed 6-8-21; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 9

RIN 2900-AR24

Extension of Veterans' Group Life Insurance (VGLI) Application Periods in Response to the COVID-19 Public Health Emergency

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this interim final rule to extend the deadline for former members insured under Servicemembers' Group Life Insurance (SGLI) to apply for VGLI coverage following separation from service in order to address the inability of former members directly or indirectly affected by the 2019 Novel Coronavirus (COVID-19) public health emergency to purchase VGLI. This rule will be in effect until December 11, 2021.

DATES: This interim final rule is effective June 9, 2021.

Comment date: Comments must be received on or before July 9, 2021.

ADDRESSES: Comments may be submitted through www.Regulations.gov or mailed to Director, VA Insurance Service (29), 5000 Wissahickon Avenue, Philadelphia, PA 19144. Please note that due to circumstances associated with the COVID-19 pandemic, VA discourages the submission of comments by mail. Comments should indicate that they are submitted in response to "RIN 2900-AR24 Interim Final Rule—Extension of VGLI Application Periods in Response to the COVID-19 Public Health Emergency." Comments received will be available at regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Paul Weaver, Department of Veterans Affairs Insurance Service (310/290B), 5000 Wissahickon Avenue, Philadelphia, PA 19144, (215) 842-2000, ext. 4263. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 1977 of title 38, United States Code, authorizes the VGLI program, which provides former members separating from service with the option of converting existing SGLI coverage into renewable, 5-year term group life insurance coverage in amounts ranging from \$10,000 to \$400,000 based upon the amount of SGLI coverage. See 38 U.S.C. 1967(a), 1968(b)(1)(A), 1977(a), (b). Section 9.2 of title 38, Code of Federal Regulations, provides the effective dates of VGLI coverage and

application requirements. VGLI coverage may be granted if an application, the initial premium, and evidence of insurability are received within 1 year and 120 days following termination of duty. 38 CFR 9.2(c). Evidence of insurability is not required during the initial 240 days following termination of duty. *Id.*

On October 7, 2020, VA published a final rule in the **Federal Register** (85 FR 63208) that amended 38 CFR 9.2 by adding new paragraph (f)(1) to extend by 90 days the time periods under 38 CFR 9.2(c) during which former members may apply for VGLI. Thus, former members who submit a VGLI application and the initial premium within 330 days following separation from service will not be required to submit evidence of insurability. Former members who do not apply for VGLI within 330 days following separation from service may still receive VGLI coverage if they apply for the coverage within 1 year and 210 days following separation from service and submit the initial premium and evidence of insurability. The 90-day extensions for former members to apply for VGLI are in effect from June 11, 2020, through June 11, 2021. Between June 11, 2020 and March 31, 2021, 14,855 former members utilized these 90-day extensions to purchase VGLI coverage.

The rationale for applying the rule for one year was that VA is obligated to manage VGLI according to sound and accepted actuarial principles (see 38 U.S.C. 1977(c), (f), (g)), and that VA would be able to utilize this one-year time period to gather and analyze data on VGLI claims experience to determine if it would be actuarially sound to further extend the applicability date. VGLI is funded by premiums from insured Veterans, and VA has determined that current premium amounts that insured Veterans pay for VGLI coverage are sufficient to absorb the cost of any additional VGLI claims that would be paid due to VA extending that application deadline period for an additional six months. Considering the continuing challenges involved with obtaining necessary medical records brought about by the COVID-19 pandemic, and that VA has determined that it would be actuarially sound to extend VGLI application deadlines, VA will be extending the deadline for VGLI applications received between June 12, 2021 and December 11, 2021. This interim final rulemaking will continue to provide separating service members an additional 90 days to apply for VGLI during the COVID-19 pandemic and is intended to ease some of the financial consequences of the COVID-19

pandemic for former members, especially those with disabilities incurred while in service, since many of these former members would otherwise not qualify for a private commercial plan of insurance due to such disabilities.

Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause to dispense with the opportunity for prior comment with respect to this rule and to make the rule effective upon publication. Pursuant to 5 U.S.C. 553(b)(B), the opportunity for advance public comment is not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”

VA previously published an interim final rule on June 11, 2020 which expires on June 11, 2021. In this interim final rulemaking, we are extending the prior rulemaking by an additional six months. If the interim final rulemaking is not published prior to the expiration date, then there will be a gap in the application deadline extensions for those individuals applying for VGLI.

The need for this interim final rule was unanticipated because the data pertaining to COVID-19 was continuously evolving and VA had to evaluate data from an actuarial perspective to ensure that another extension of the application deadlines would not put upward pressure on VGLI premiums or otherwise negatively impact the financial stability of the program. The Secretary finds that it is impracticable to delay this regulation for the purpose of soliciting public comment because former members cannot receive VGLI coverage if they do not satisfy the application requirements within the deadlines established by 38 CFR 9.2(c). The VGLI statute does not authorize retroactive adjudication of applications for VGLI coverage, and former members who wish to apply for VGLI would be significantly harmed if these extensions lapse, since many former members choose to purchase VGLI because these former members are unable to qualify for private commercial plans of insurance coverage due to disabilities incurred while in service. Section 553(d) also requires a 30-day delayed effective date following publication of a rule, except for “(1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and

statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.”

Pursuant to section 553(d)(1), the Secretary finds that this interim final rule should be effective immediately upon publication because this is a substantive rule which relieves restrictions, *i.e.*, extends deadlines for VGLI applications. Also, pursuant to section 553(d)(3), the Secretary finds that there is good cause to make the rule effective upon publication because of the impracticability of delaying implementation of the regulatory amendment, as discussed above.

For the foregoing reasons, the Secretary of Veterans Affairs is issuing this rule as an interim final rule with an immediate effective date. The Secretary of Veterans Affairs will consider and address comments that are received within 30 days of the date this interim final rule is published in the **Federal Register**.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The provisions contained in this interim final rulemaking are applicable to individual Veterans, and applications for VGLI, as submitted by such individuals, are specifically managed and processed within VA and through Prudential Insurance Company of America, which is not considered to be a small entity. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final

regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.103, Life Insurance for Veterans.

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on May 24, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 9 as set forth below:

PART 9—SERVICEMEMBERS’ GROUP LIFE INSURANCE AND VETERANS’ GROUP LIFE INSURANCE

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

Authority: 38 U.S.C. 501, 1965–1980A, unless otherwise noted.

■ 2. Section 9.2 is amended by revising paragraph (f)(2) to read as follows:

§ 9.2 Effective date; applications

* * * * *

(f) * * *

(2) Paragraph (f)(1) of this section shall not apply to an application or initial premium received after December 11, 2021.

[FR Doc. 2021-12017 Filed 6-8-21; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2020-0321; FRL-10023-81-Region 3]

Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone National Ambient Air Quality Standards Second Maintenance Plan for the Tioga County 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 Tioga County, Pennsylvania area (Tioga County 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 9, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2020-0321. 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:

Adam Yarina, 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) 814-2108. Mr. Yarina can also be reached via electronic mail at Yarina.Adam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 8, 2021 (86 FR 8569), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania. In the NPRM, EPA proposed approval of Pennsylvania's plan for maintaining the 1997 ozone NAAQS in the Tioga County Area through July 6, 2027, in accordance with CAA section 175A. The formal SIP revision was submitted by PADEP on March 10, 2020.

II. Summary of SIP Revision and EPA Analysis

On July 6, 2007 (72 FR 36892, effective same day), EPA approved a redesignation request and maintenance plan from PADEP for the Tioga County 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*,¹ the D.C. Circuit held that this requirement cannot be waived for areas—like the Tioga County 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.² PADEP's March 10, 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 8, 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 value³ 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 March 10, 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 Tioga County Area as a revision to the Pennsylvania SIP.

Other specific requirements of PADEP's March 10, 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 comments on the February 8, 2021 NPRM from two commenters. All comments received are in the docket for this rulemaking action. A summary of the comments and EPA's responses are provided herein.

The first commenter asserts that EPA cannot approve this plan because air quality levels were not at or below 85% of the NAAQS, and that one of EPA's methods for demonstrating continued future maintenance of the NAAQS is flawed.

Comment 1: The commenter asserts that EPA cannot approve this plan "because the air quality has not been below 85% of the NAAQS for the time period EPA claims." The commenter claims that the following statement in EPA's proposed approval of the limited maintenance plan is incorrect: "The Tioga County Area has maintained air quality levels below the 1997 ozone NAAQS since the Area first attained the NAAQS in 2006, and maintained air quality levels at or below 85% of the NAAQS since 2009." The commenter claims that this statement is refuted by EPA's own data, which shows the air quality was at 0.071 for the years 2010–2012.

¹ 882 F.3d 1138 (D.C. Cir. 2018).

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

³ 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.

Response 1: The cited statement from the proposal is factually accurate, and EPA does not agree with the commenter that it is unsupported by the air quality data, nor do we agree that the commenter has identified a valid basis for disapproval. As discussed in the February 8, 2021 NPRM, based on the rounding convention described in 40 CFR part 50, appendix I, the 1997 ozone NAAQS is attained if the design value is 0.084 parts per million (ppm) or below (see 86 FR 8571); 85% of this standard would be a design value of 0.071 ppm. The data therefore supports EPA's statement in the NPRM that the Tioga County Area has maintained air quality levels below the 1997 ozone NAAQS since the Area first attained the NAAQS in 2006, and maintained air quality levels at or below 85% of the NAAQS since 2009. It is worth noting that even if the commenter's assertion were correct, the Area would have been below 85% of the standard since 2012 and the Area's LMP would still be approvable consistent with EPA's long-standing guidance.⁴

Comment 2: The commenter also asserts that one of EPA's methods for demonstrating continued future maintenance of the standard—specifically, the method that adds the greatest recent design value increase to the current design value—is “arbitrary and has no basis in scientific fact.” The commenter goes on to assert that “not only is the highest increase during a certain point in time in the past not indicative of potential future conditions, but EPA arbitrarily chooses a time period with seemingly no bounds . . . EPA's use of this arbitrary formula to determine whether an area will not violate the NAAQS at some point in the future is based in science hope, not science fact and EPA should re-evaluate its use in approving the Tioga County Limited Maintenance Plan.”

Response 2: As discussed in the February 8, 2021 NPRM, states may demonstrate continued maintenance of the NAAQS by showing stable or improving air quality trends in one or more ways (see 86 FR 8571). The method that the commenter refers to was relied on by EPA as additional support that the Tioga County LMP demonstrates continued maintenance of the 1997 ozone NAAQS. Consistent

with EPA's long-standing guidance, the primary evidence EPA relied upon in determining that the Area would continue to maintain the standard throughout the ten years of the LMP was the clear downward trend of ozone levels in the Tioga County Area since 2006, including levels at or below 85% of the NAAQS since 2009.⁵ Additionally, EPA notes the Tioga County Area is currently in attainment for the more-stringent 2008 and 2015 ozone NAAQS, which have design values of 0.075 ppm and 0.070 ppm, respectively; and future year design value projections from EPA show that the design value for the Tioga County Area is expected to be 0.0573 ppm (see 86 FR 8572). The data cited in the comment, taken together with these other factors, strengthen EPA's considered judgement that the plan adequately demonstrates continued maintenance of the 1997 ozone NAAQS.

Comment 3: The second commenter asserts that EPA cannot approve the Tioga County Area LMP because “it would do something that is not authorized under the rules.” The commenter then advances various policy and legal theories that do not appear to be related to hypothetical future litigation in federal court regarding the legality of the Tioga LMP. The comment makes assertions about what factors the court will consider in resolving this hypothetical action and speculates how the court will rule against EPA.

Response 3: EPA has no knowledge of any lawsuit involving the Tioga LMP in federal court and has not reason to believe any such litigation exists. Because the comment is addressed to hypothetical litigation, also because EPA's authority to approve this plan is well-established in the NPRM, it is EPA's judgment it has no obligation to respond to commenter's speculation as to the actions that EPA will need to take to address the ruling of a hypothetical lawsuit.

IV. Final Action

EPA is approving PADEP's second maintenance plan for the Tioga County 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 if 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

⁴ See “Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas” from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; “Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas” from Joseph Paisie, OAQPS, dated October 6, 1995; and “Limited Maintenance Plan Option for Moderate PM₁₀ Nonattainment Areas” from Lydia Wegman, OAQPS, dated August 9, 2001.

⁵ Id.

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 9, 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 Tioga County 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 28, 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 the entry "Second Maintenance Plan for the State College 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 State College 1997 8-Hour Ozone Nonattainment Area.	Tioga County Area ..	3/10/20	6/9/21, [insert Federal Register citation].	The Tioga County area consists solely of Tioga County.

* * * * *
[FR Doc. 2021-11925 Filed 6-8-21; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2020-0596; FRL-10024-43-Region 3]

Air Plan Approval; Virginia; Revised RACT Permit for Roanoke Electric Steel/Steel Dynamics, Inc.

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 Virginia. The revision consists of amendments to a federally enforceable state operating permit (FESOP) which was previously incorporated into the Virginia SIP in order to implement reasonably available control technology (RACT) for nitrogen oxide (NO_x)

emissions from Steel Dynamics, Inc. (hereafter "SDI," formerly Roanoke Electric Steel). This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on July 9, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2020-0596. 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: David Talley, 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) 814-2117. Mr. Talley can also be reached via electronic mail at talley.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 8, 2021 (86 FR 13254), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Virginia. In the NPRM, EPA proposed approval of Virginia's submittal. The formal SIP revision was submitted by the Virginia Department of Environmental Quality (VADEQ) on behalf of the Commonwealth on April 14, 2020.

Prior to the establishment of nonattainment areas for the 1997 8-hour ozone national ambient air quality standards (NAAQS), EPA developed a program to allow these potential nonattainment areas to voluntarily adopt local emission control programs to avoid air quality violations and mandated nonattainment area controls. Areas with air quality meeting the 1979 1-hour ozone NAAQS were eligible to participate. In order to participate, state

and local governments and EPA developed and signed a memorandum of agreement that describes the local control measures the state or local community intends to adopt and implement to reduce ozone emissions in advance of air quality violations. In this agreement, also known as an Early Action Compact (EAC), the state or local communities agree to prepare emission inventories and conduct air quality modeling and monitoring to support its selection of emission controls. Areas that participated in the EAC program had the flexibility to institute their own approach in maintaining clean air and protecting public health. Several localities in the Winchester and Roanoke areas elected to participate in the EAC program. The areas that signed an EAC were the City of Winchester and Frederick County, which comprised the Northern Shenandoah Valley EAC; and the cities of Roanoke and Salem, and the counties of Roanoke and Botetourt, which comprised the Roanoke EAC. VADEQ's approach to implementing the EAC was that RACT be applied to sources of NO_x and volatile organic compounds (VOCs) within those localities that were otherwise not subject to RACT. The Roanoke Electric Steel Corporation, currently SDI, was one such source. On April 27, 2005, EPA approved a SIP revision for the Commonwealth of Virginia which incorporated provisions from a federally enforceable state operating permit into the Virginia SIP in order to apply RACT to several units at SDI (Virginia permit registration No. 20131, issued December 22, 2004; hereafter, "2004 Permit"). See 70 FR 21621.

II. Summary of SIP Revision and EPA Analysis

Virginia's April 14, 2020 submittal includes a revised operating permit for SDI which amends the 2004 permit to account for changes in operation at the facility, including the shut-down of a number of units. Since the issuance of the 2004 permit (and EPA's subsequent SIP approval), operations at the facility have changed, requiring a revision of both the operating permit and the operating permit provisions incorporated into the SIP. The only remaining units at the facility that are subject to the source specific NO_x RACT limits of the 2004 permit are Electric Arc Furnace (EAF) #5 and the Ladle Metallurgical Station (LMS) #5. The other units have been removed, replaced with equipment that was not subject to RACT, or never constructed. The RACT limits for those remaining units have not changed, and there are no emissions increases associated with either the

revised permit, or Virginia's proposed SIP revision. The permit, and ultimately the SIP, are simply being revised to account for the removal of provisions related to emissions units that no longer exist. Other specific requirements of 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 one comment in response to the proposed rulemaking. The comment was supportive of EPA's proposed action and will not be addressed here but is provided in the docket for this rulemaking. No adverse comments were received.

IV. Final Action

EPA is approving VADEQ's April 14, 2020 submittal as a revision to the Virginia SIP.

V. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege

law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . ." The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

VI. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation

by reference of the unredacted portions of Virginia stationary source permit to operate, registration number 20132, issued to Roanoke Electric Steel (D/B/A Steel Dynamics, Inc.) on December 22, 2004, and revised on March 25, 2020. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

VII. 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).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-

agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

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 9, 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 pertaining to source specific NO_x limits at SDI 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, Volatile organic compounds.

Dated: May 28, 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 VV—Virginia

- 2. In § 52.2420, the table in paragraph (d) is amended by removing the entry "Roanoke Electric Steel Corp" and adding the entry "Roanoke Electric Steel Corporation D/B/A Steel Dynamics, Inc.—Roanoke Bar Division" in its place to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(d) * * *

¹ 62 FR 27968 (May 22, 1997).

EPA—APPROVED SOURCE SPECIFIC REQUIREMENTS

Source name	Permit/order or registration No.	State effective date	EPA approval date	40 CFR part 52 citation
* * * * *	*	*	*	*
Roanoke Electric Steel Corporation D/B/A Steel Dynamics, Inc.—Roanoke Bar Divi- sion.	20131	3/25/20	6/9/21, [Insert Federal Register citation]	52.2420(d)(7)
* * * * *	*	*	*	*

* * * * *

[FR Doc. 2021–11923 Filed 6–8–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3160 and 9230

[212.LLHQ310000.L13100000.PP0000]

RIN 1004–AE77

Onshore Oil and Gas Operations and Coal Trespass—Annual Civil Penalties Inflation Adjustments

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule adjusts the level of civil monetary penalties contained in the Bureau of Land Management's (BLM) regulations governing onshore oil and gas operations and coal trespass as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and consistent with applicable Office of Management and Budget (OMB) guidance. The oil and gas operations penalty adjustments made by this final rule constitute the 2021 annual inflation adjustments, accounting for 1 year of inflation spanning the period from October 2019 through October 2020. The coal trespass inflation adjustments in this rule include the initial “catch-up” adjustment for 2016, and the annual adjustments for years 2017 to 2021.

DATES: This rule is effective on June 9, 2021.

FOR FURTHER INFORMATION CONTACT: For information regarding the BLM's Fluid Minerals Program, please contact Donna Dixon, Division Chief, Fluid Minerals Division, telephone: 505–954–2032; email: dbdixon@blm.gov. For information regarding the BLM's Solid Minerals Program, please contact Lindsey Curnutt, Division Chief, Solid Minerals Division, telephone: 775–824–

2910; email: lcurnutt@blm.gov. For questions relating to regulatory process issues, please contact Jennifer Noe, Division of Regulatory Affairs, email: jnoe@blm.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 to contact the above individuals.

SUPPLEMENTARY INFORMATION:

I. Background

II. Calculation of 2021 Adjustments

III. Procedural Requirements

- A. Administrative Procedure Act
- B. Regulatory Planning and Review (E.O. 12866 and E.O. 13563)
- C. Regulatory Flexibility Act
- D. Small Business Regulatory Enforcement Fairness Act
- E. Unfunded Mandates Reform Act
- F. Takings (E.O. 12630)
- G. Federalism (E.O. 13132)
- H. Civil Justice Reform (E.O. 12988)
- I. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)
- J. Paperwork Reduction Act
- K. National Environmental Policy Act
- L. Effects on the Energy Supply (E.O. 13211)

I. Background

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (the 2015 Act) became law, amending the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410).

The 2015 Act requires agencies to:

1. Adjust the level of civil monetary penalties for inflation with an initial “catch-up” adjustment through an interim final rulemaking in 2016;
2. Make subsequent annual adjustments for inflation beginning in 2017; and
3. Report annually in Agency Financial Reports on these inflation adjustments.

The purpose of these adjustments is to maintain the deterrent effect of civil monetary penalties and promote compliance with the law (*see* Sec. 1, Pub. L. 101–410).

As required by the 2015 Act, the BLM issued an interim final rule that

adjusted the level of civil monetary penalties in BLM regulations with the initial “catch-up” adjustment (RIN 1004–AE46, 81 FR 41860), which was published on June 28, 2016, and became effective on July 28, 2016. On January 19, 2017, the BLM published a final rule (RIN 1004–AE49, 82 FR 6305) updating the civil penalty amounts to the 2017 annual adjustment levels. Final rules updating the civil penalty amounts to 2018, 2019, and 2020 annual adjustment levels were published in subsequent years (RIN 1004–AE51, 83 FR 3992; RIN 1004–AE56, 84 FR 22379; and RIN 1004–AE77, 85 FR 10617, respectively).

OMB issued Memorandum M–21–10 on December 23, 2020, (Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015) explaining agency responsibilities for identifying applicable penalties and calculating the annual adjustment for 2021 in accordance with the 2015 Act.

II. Calculation of 2021 Adjustment

In accordance with the 2015 Act and OMB Memorandum M–21–10, the BLM has identified applicable civil monetary penalties in its regulations and calculated the annual adjustments. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, nor does it include fees for services, licenses, permits, or other regulatory review. The calculated annual inflation adjustments are based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI-U) for the October preceding the date of the adjustment, and the prior year's October CPI-U. Consistent with guidance in OMB Memorandum M–21–10, the BLM divided the October 2020 CPI-U by the October 2019 CPI-U to calculate the

multiplier. In this case, October 2020 CPI-U (260.388)/October 2019 CPI-U (257.346) = 1.01182. OMB

Memorandum M-21-10 confirms that this is the proper multiplier. (OMB Memorandum M-21-10 at 1 and n.4.)

The 2015 Act requires the BLM to adjust the civil penalty amounts in 43 CFR 3163.2 and 43 CFR 9239.5-3(f)(1). To accomplish this, the BLM multiplied the current penalty amounts in 43 CFR 3163.2(b)(1) and (2), (d), (e), and (f) by the multiplier set forth in OMB Memorandum M-21-10 (1.01182) to obtain the adjusted penalty amounts. The 2015 Act requires that the resulting amounts be rounded to the nearest \$1.00 at the end of the calculation process.

This year's adjustments include 43 CFR 9239.5-3(f)(1), which provides for a penalty of not more than \$1,000 for each day of violation for willfully conducting coal exploration for commercial purposes without an exploration license. This provision meets the criteria for annual adjustments under the 2015 Act but was inadvertently omitted in previous adjustments. Consistent with OMB Memorandum M-16-06 (February 24, 2016), the adjusted penalty amount was calculated by applying the initial "catch-up" adjustment based on the percent change between the CPI-U for 1977, the year the current penalty amount was established by regulation,

and the October 2015 CPI-U, giving a catch-up adjustment multiplier of 3.86101 for 2016. After applying the initial catch-up adjustment multiplier, that amount was multiplied by 1.09481 to reflect the combined annual inflation adjustments for 2017 to 2021, giving an adjusted penalty of \$4,227.00.

The adjusted penalty amounts will take effect immediately upon publication of this rule. Pursuant to the 2015 Act, the adjusted civil penalty amounts apply to civil penalties assessed after the date the increase takes effect, even if the associated violation predates such increase. This final rule adjusts the following civil penalties:

CFR citation	Description of the penalty	Current penalty	Adjusted penalty
43 CFR 3163.2(b)(1)	Failure to comply	\$1,115	\$1,128
43 CFR 3163.2(b)(2)	If corrective action is not taken	11,160	11,292
43 CFR 3163.2(d)	If transporter fails to permit inspection for documentation	1,115	1,128
43 CFR 3163.2(e)	Failure to permit inspection, failure to notify	22,320	22,584
43 CFR 3163.2(f)	False or inaccurate documents; unlawful transfer or purchase	55,800	56,460
43 CFR 9239.5-3(f)(1)	Coal exploration for commercial purposes without an exploration license	1,000	4,227

III. Procedural Requirements

A. Administrative Procedure Act

In accordance with the 2015 Act, agencies must adjust civil monetary penalties "notwithstanding Section 553 of the Administrative Procedure Act" (sec. 4(b)(2), 2015 Act). The BLM is promulgating this 2021 inflation adjustment for civil penalties as a final rule pursuant to the provisions of the 2015 Act and OMB guidance. A proposed rule is not required because the 2015 Act expressly exempts the annual inflation adjustments from the notice and comment requirements of the Administrative Procedure Act. In addition, since the 2015 Act does not give the BLM any discretion to vary the amount of the annual inflation adjustment for any given penalty to reflect any views or suggestions provided by commenters, it would serve no purpose to provide an opportunity for public comment on this rule.

B. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the OMB will review all significant rules. OIRA has determined that this rule is not significant. (See OMB Memorandum M-21-10 at 3).

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability and to

reduce uncertainty and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science, and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements to the extent permitted by the 2015 Act.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The 2015 Act expressly exempts these annual inflation adjustments from the requirement to publish a proposed rule for notice and comment (see sec. 4(b)(2), 2015 Act). Because the final rule in this case does not include publication of a proposed rule, the RFA does not apply to this final rule.

D. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Will not have an annual effect on the economy of \$100 million or more;

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rule will potentially affect individuals and companies who conduct operations on oil and gas leases or who explore for coal for commercial purposes without an exploration license on Federal or Indian lands. The BLM believes that the vast majority of potentially affected entities will be small businesses as defined by the Small Business Administration. However, the BLM does not believe the rule will pose a significant economic impact on the oil and gas or coal industries, including any small entities, as any lessee or trespasser can avoid being assessed civil penalties by operating in compliance with BLM rules and regulations.

E. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

F. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

G. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. Therefore, a federalism summary impact statement is not required.

H. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

I. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

J. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not

required to respond to, a collection of information unless it displays a currently valid OMB control number.

K. National Environmental Policy Act

A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because, as a regulation of an administrative nature, the rule is covered by a categorical exclusion (*see* 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

L. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

List of Subjects*43 CFR Part 3160*

Administrative practice and procedure, Government contracts, Indians-lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 9230

Penalties, Public lands.

For the reasons given in the preamble, the BLM amends chapter II of title 43 of the Code of Federal Regulations as follows:

PART 3160—ONSHORE OIL AND GAS OPERATIONS

- 1. The authority citation for part 3160 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; 43 U.S.C. 1732(b), 1733, 1740; and Sec. 107, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

Subpart 3163—Noncompliance, Assessments, and Penalties**§ 3163.2 [Amended]**

- 2. In § 3163.2:
 - a. In paragraph (b)(1), remove “\$1,115” and add in its place “\$1,128”.
 - b. In paragraph (b)(2), remove “\$11,160” and add in its place “\$11,292”.
 - c. In paragraph (d), remove “\$1,115” and add in its place “\$1,128”.
 - d. In paragraph (e) introductory text, remove “\$22,320” and add in its place “\$22,584”.
 - e. In paragraph (f) introductory text, remove “\$55,800” and add in its place “\$56,460”.

PART 9230—TRESPASS

- 3. The authority citation for part 9230 is revised to read as follows:

Authority: R.S. 2478 and 43 U.S.C. 1201.

Subpart 9239—Kinds of Trespass**§ 9239.5–3 [Amended]**

- 4. In § 9239.5–3(f)(1), remove “\$1,000” and add in its place “\$4,227”.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 2021–12053 Filed 6–8–21; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MB Docket No. 21–56; RM–11811; DA 21–595; FR ID 28830]

**Television Broadcasting Services
Jonesboro, Arkansas**

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On February 12, 2021, the Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking* in response to a petition for rulemaking filed by Gray Television Licensee, LLC (Gray), the licensee of KAIT, channel 8 (ABC), Jonesboro, Arkansas, requesting the substitution of channel 27 for channel 8 at Jonesboro in the DTV Table of Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to substitute channel 27 for channel 8 at Jonesboro.

DATES: Effective June 9, 2021.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or JoyceBernstein@fcc.gov.

SUPPLEMENTARY INFORMATION: The proposed rule was published at 86 FR 17110 on April 1, 2021. Gray filed comments in support of the petition reaffirming its commitment to apply for channel 20. No other comments were filed. Gray states that VHF channels have certain propagation characteristics which may cause reception issues for some viewers, and that the reception of VHF signals requires larger antennas relative to UHF channels. Moreover, many viewers are unable to receive KAIT's signal. Gray further states that while there is small terrain limited predicted loss area, the viewers will continue to be well served by at least five other stations and receive ABC

network service from WATN-TV, Memphis, Tennessee.

This is a synopsis of the Commission's *Report and Order*, MB Docket No. 21–56; RM–11811; DA 21–595, adopted May 20, 2021, and released May 20, 2021. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

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

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

India Malcolm,

Assistant Bureau Chief for Management.

Final Rule

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

PART 73—RADIO BROADCAST SERVICE

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

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

■ 2. In § 73.622(i), amend the Post-Transition Table of DTV Allotments, under Arkansas, by revising the entry for Jonesboro to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(i) * * *

Community	Channel No.
* * *	* * *
ARKANSAS	
* * *	* * *
Jonesboro	* 20, 27, 48
* * *	* * *

[FR Doc. 2021–12052 Filed 6–8–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 201204–0325]

RIN 0648–BK58

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 lingcod retention in the salmon troll fishery north of 40°10' N lat.

DATES: This final rule is effective June 9, 2021.

ADDRESSES:

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/>.

FOR FURTHER INFORMATION CONTACT: Gretchen Hanshaw, phone: 206–526–6147 or email: gretchen.hanshaw@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Pacific Coast Groundfish Fishery Management Plan (PCGFMP) and its implementing regulations at title 50 in the Code of Federal Regulations (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 correcting amendments (86 FR 14379, March 16, 2021; 86 FR 27816, May 24, 2021) to implement the Council's recommendations for the 2021–2022 harvest specifications and management measures.

The management measures set at the start of the biennial harvest specifications cycle help the 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 the April 8–9 and 12–15, 2021, virtual meetings, the Council recommended adjusting the incidental retention allowance for lingcod in the salmon troll fishery north of 40°10' N lat.

Lingcod Retention in the Salmon Troll Fishery

The commercial fishery for salmon using trolled hook and line gear operates off Washington, Oregon, and California, usually beginning in the spring. This fishery is managed by NMFS and co-managers (states and the tribes) to harvest, but not exceed, salmon harvest targets that are set annually, based on the best available scientific information. Participants in the salmon troll fishery are not prohibited from fishing for salmon in areas that are closed to groundfish fishing, like the non-trawl Rockfish Conservation Area (RCA). Salmon trollers, however, when fishing in the RCA north of 40°10' N. lat., are prohibited from retaining groundfish with two exceptions; yellowtail rockfish and lingcod may be retained in limited quantities and subject to an incidental retention ratio of groundfish to Chinook salmon.

The 2021–2022 harvest specifications and management measures final rule, published on December 11, 2020 (85 FR 79880), maintained the existing

incidental retention ratio for lingcod, which was last revised in 2019. At the April 8–9 and 12–15, 2021, virtual meeting, the Council recommended a change in the incidental retention ratio to increase the number of incidentally caught lingcod that may be retained per Chinook salmon.

As described in the 2019–2020 harvest specifications and management measures Environmental Assessment, the Council's objectives with the lingcod landing ratio in the salmon troll fishery coupled with a per trip maximum retention limit are to allow incidentally caught lingcod to be landed. The intent of this ratio is to strike a balance between providing a modest economic benefit to the salmon troll fishery and reducing regulatory discards of lingcod, while also dissuading targeting of lingcod and not preempting targeted lingcod harvest opportunities in the groundfish fishery.

The most recent stock assessment (2017) indicates that biomass of lingcod has been increasing since 1999. Salmon trollers also testified at the April Council meeting that they are catching lingcod more often than in previous years when targeting Chinook salmon. While lingcod are increasing in abundance, Chinook salmon harvest opportunities are becoming more restricted. Landings and numbers of trips, which are indicators of fishing effort, for Chinook salmon in 2020 were the lowest since 2011, which is likely due to effects of the COVID–19 pandemic, as well as restricted Chinook salmon harvest opportunities in low abundance years. With low Chinook salmon harvest in 2020, lingcod reached its highest revenue contributions to salmon troll fishermen. This indicates that lingcod is contributing to fishing portfolios of some salmon troll fishermen, though the number of salmon troll vessels that retain lingcod (approximately 13.5 percent) has remained fairly steady since 2011. In response to these changes, at the April Council meeting, industry requested a change in the incidental lingcod retention ratio in the salmon troll fishery to allow for increased lingcod retention. Industry did not request a change to the incidental lingcod retention trip limit of ten lingcod or to any of the other lingcod harvest limits.

In response to industry's request, the Council considered most recently available scientific and fishery information, including but not limited to harvest levels in the salmon troll fishery in recent years, mortality estimates for 2019, and forecasts for ocean salmon fisheries. Based on this information, the Council recommended

a change to the lingcod landing ratio in the salmon troll fishery.

The Council's recommendation to the incidental lingcod retention ratio in the salmon troll fishery was based on:

- (1) A lack of evidence that salmon trollers were targeting lingcod during Chinook salmon trips under the 2019 and 2020 landing ratio;
- (2) Predicted harvests of lingcod and co-occurring yelloweye rockfish that are expected to remain well within the 2021 Annual Catch Limits, while not preempting targeted groundfish fishing opportunities;
- (3) anecdotal information about an increasing lingcod encounter rate in the salmon troll fishery; and
- (4) the economic benefits of reducing regulatory discards and allowing retention of lingcod, particularly in Chinook salmon low abundance years.

Therefore, the Council recommended, and NMFS is implementing, a change in the incidental lingcod retention ratio in the salmon troll fishery north of 40°10' N. lat. from a ratio of one lingcod per five Chinook salmon to a ratio of one lingcod per two Chinook salmon. The rules allowing a "plus one" lingcod in addition to the ratio, a ten lingcod per trip limit, and a 1,000 lbs/month limit would remain in place.

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 coasts of Washington, Oregon, and northern California. 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 April 2021 meeting, the Council recommended changing the retention ratio of lingcod to Chinook salmon in the salmon troll fishery to allow lingcod to be retained up to the status quo ten lingcod trip limit even if fewer Chinook salmon are on board. The Council recommends relieving the restriction imposed by the ratio as soon as possible, early in the salmon troll season, in an effort to reduce regulatory discards of lingcod in the salmon troll fishery north of 40°10' N. lat. The 2020 fishery information upon which this recommendation is based, was not complete and available until early 2021, and therefore could not have been used during the development of the 2021–2022 harvest specifications and management measures.

Additionally, if the new retention ratio is not implemented until closer to the end of the Chinook salmon troll season, after proposed and final rulemaking, lingcod would continue to be discarded rather than retained. Leaving the old ratio in place would fail to meet the Councils objectives to reduce regulatory discards of lingcod, and to provide economic benefits to the salmon troll fishery while not preempting directed groundfish fisheries. Therefore, providing a comment period for this action could limit the benefits to the salmon troll fishery, and the vessels that participate in it.

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 changing the lingcod to Chinook salmon retention ratio in the salmon troll fishery north of 40°10' N lat. This adjustment was requested by the Council's advisory bodies, as well as members of industry, during the Council's April 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, Indian fisheries.

Dated: June 4, 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. Revise Table 3 (North) to part 660, subpart F, to read as follows:

BILLING CODE 3510–22–P

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. lat.							
Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table							5/25/2021
	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	
Rockfish Conservation Area (RCA)^{1/}:							
1 North of 46°16' N. lat.	shoreline - 100 fm line ^{1/}						
2 46°16' N. lat. - 40°10' N. lat.	40 fm line ^{1/} - 100 fm line ^{1/}						
3	30 fm line ^{1/} - 40 fm line ^{1/2/}						
See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Bank, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	Minor Slope Rockfish ^{3/} & Darkblotched rockfish		2,000 lbs / months				
5	Pacific ocean perch		100 lbs/ month				
6	Sablefish		600 lbs. daily, or 1 landing per week up to 2,000 lbs, not to exceed 4,000 lbs/2 months				
7	Shortpine thornyheads		50 lb/month				
8	Longspine thornyheads		50 lb/month				
9	Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish ^{4/8/}		5,000 lbs/ month				
12	Whiting		300 lbs/ month				
13	Minor Shelf Rockfish ^{3/}		800 lbs / month				
14	Widow rockfish		2,000 lb/ 2 months				
15	Shortbelly Rockfish		200 lbs / month				
16	Yellowtail rockfish		1,500 lbs/ month				
17	Canary rockfish		1,000 lbs/ 2 months				
18	Yelloweye rockfish		CLOSED				
19	Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish & CA black rockfish						
20	North of 42°00' N. lat.		5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish ^{5/}				
21	42°00' N. lat. - 40°10' N. lat.		7,000 lb/ 2 months, no more than 2,000 lb of which may be species other than black rockfish				
22	Lingcod ^{6/}						
23	North of 42°00' N. lat.		2,000 lbs/ month				
24	42°00' N. lat. - 40°10' N. lat.		1,000 lbs / month				
25	Pacific cod		1,000 lbs/ 2 months				
26	Spiny dogfish		200,000 lbs/ 2 months	150,000 lbs/ 2 months	100,000 lbs/ 2 months		
27	Longnose skate		Unlimited				
28	Big skate		Unlimited				
29	Other Fish ^{7/} & Cabezon in California		Unlimited				
30	Oregon Cabezon/Kelp Greenling		Unlimited				
31	SALMON TROLL (subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)						
32	North		Salmon trollers may retain and land up to 500 lbs of yellowtail rockfish per month as long as salmon is on board, both within and outside of the RCA. Salmon trollers may retain and land up to 1 lingcod per 2 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. The lingcod limit only applies during times when lingcod retention is allowed, and is not "CLOSED." These limits are within the per month limits described in the table above, and not in addition to those limits. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.				
33	PINK SHRIMP NON-GROUNDFISH TRAWL (not subject to RCAs)						
34	North		Effective April 1 - October 31: Groundfish: 500 lbs/day, multiplied by the number of days of the trip, not to exceed 1,500 lbs/trip. The following sublimits also apply and are counted toward the overall 500 lbs/day and 1,500 lbs/trip groundfish limits: lingcod 300 lbs/month (minimum 24 inch size limit); sablefish 2,000 lbs/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lbs/day and 1,500 lbs/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.				
1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.							
2/ Between 46°16' N. lat. and 40°10' N. lat. and the 30 fm and 40 fm lines, fishing is only allowed with hook-and-line gear except bottom longline and dinglebar gear, as defined in §660.11							
3/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.							
4/ "Other flatfish" are defined at § 660.11 and include butter sole, curfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.							
5/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.							
6/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.							
7/ "Other fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.							
8/ Open access vessels are allowed to fish inside groundfish conservation areas using hook and line only. See section 660.330 (d) of the regulations for more information.							
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.							

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Between 46°16' N. lat. and 40°10' N. lat. and the 30 fm and 40 fm lines, fishing is only allowed with hook-and-line gear except bottom longline and danglebar gear, as defined in §660.11

3/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

4/ "Other flatfish" are defined at § 660.11 and include butter sole, curfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

5/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

6/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

8/ Open access vessels are allowed to fish inside groundfish conservation areas using hook and line only. See section 660.330 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Proposed Rules

Federal Register

Vol. 86, No. 109

Wednesday, June 9, 2021

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3555

[Docket No. RHS-21-SFH-0003]

RIN 0575-AD22

Single Family Housing Guaranteed Loan Program

AGENCY: Rural Housing Service, Agriculture Department (USDA).

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS or Agency), proposes to amend the current regulation for the Single Family Housing Guaranteed Loan Program (SFHGLP) to update the requirements for Federally supervised lenders, minimum net worth and experience for non-supervised lenders, approved lender participation requirements, treatment of applicants with delinquent child support payments and builder credit requirements. These changes would promote an efficient and robust management and oversight structure of lenders in the SFHGLP, strengthen underwriting practices by denying loan guarantees for applicants who are subject to administrative offset to collect delinquent child support payments and streamline requirements for screening builder-contractors by lenders.

DATES: Comments must be submitted on or before August 9, 2021.

ADDRESSES: Comments may be submitted by going to the Federal eRulemaking Portal: Go to <http://www.regulations.gov> and in the "Search Documents" box, enter the Docket Number (RHS-21-SFH-0003) or the RIN# 0575-AD22, and click the "Search" button. To submit a comment, choose the "Comment Now!" button. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available under the "Help" tab at the top of the Home page.

Other Information: Additional information about Rural Development and its programs is available on the internet at <http://www.rurdev.usda.gov/index.html>.

All comments will be available for public inspection online at the Federal eRulemaking Portal (<https://www.regulations.gov>).

FOR FURTHER INFORMATION CONTACT: Ana Placencia, Finance and Loan Analyst, Single Family Housing Guaranteed Loan Division, Rural Development, U.S. Department of Agriculture, STOP 0784, Room 2250, South Agriculture Building, 1400 Independence Avenue SW, Washington, DC 20250-0784, telephone: (254) 721-0770; or email: ana.placencia@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Rural Housing Service (RHS) is issuing a proposed rule to amend the Single-Family Housing Guaranteed Loan Program (SFHGLP) regulations as outlined in 7 CFR part 3555, subparts B, C and D by updating the regulations to strengthen oversight and management of the growing SFHGLP portfolio. The revisions align with the standards for managing credit programs recommended by the Office of Management and Budget (OMB) for Federally supervised lenders, minimum net worth, minimum experience for non-supervised lenders, and approved lender participation requirements. The revisions would also provide guidance for processing applicants with delinquent child support payments and relaxes builder requirements to better align with the credit program requirements of other Federal agencies.

Discussion of the Rule

(1) Minimum Net Worth Requirements for Non-Supervised Lenders

Currently, the Agency does not impose minimum financial or experience criteria for non-supervised lenders. Non-supervised lenders (*i.e.*, lenders not supervised by federal entities listed in § 3555.51(a)(8)) that do not meet the minimum capital and financial requirements are considered to have a weak financial position that may pose an incremental risk to the program. The Agency proposes to amend § 3555.51 and add paragraph (b)(i) and (ii) to reflect that non-supervised lenders must have a minimum adjusted

net worth of \$250,000, or at least \$50,000 in working capital plus one percent of the total volume in excess of \$25 million in guaranteed loans originated, serviced or purchased during the lender's prior fiscal year, up to a maximum required adjusted net worth of \$2.5 million and one or more lines of credit with a minimum aggregate of \$1 million. The proposed financial thresholds are based on recommendations of a third-party contractor's analysis¹ of participating lenders. The contractor's recommendation for adopting these capital and financial requirements for non-supervised lenders was derived from an analysis of the capital and net worth requirements of recognized sources or eligibility determinations outlined in § 3555.51(a). Establishing minimum financial requirements for non-supervised lenders would potentially reduce the Agency's risk of doing business with entities that have insufficient financial resources. Lenders that meet these minimum financial requirements also demonstrate trustworthiness that would contribute to the success of the SFHGLP. The contractor recommendation was determined using a combination approach of the Veterans Administration (VA) base requirement and adding the volume component, which is structured and capped following the FHA standard, *see Falcon Capital Advisor, CLIN 0003 Report*. The flexibility would allow the Agency to adjust the requirements in the technical handbook without requiring revisions to the regulatory language.

This action will align lender approval requirements with those of other Federal credit programs and incorporates best practice recommendations outlined in Office of Management and Budget (OMB) Circular A-129.²

¹ Falcon Capital Advisors, CLIN 0003 Report, Capital and Financial Requirements for Non-Regulated Lenders available at <https://www.rd.usda.gov/page/usda-linc-training-resource-library>.

² Available at: <https://fiscal.treasury.gov/files/dms/circ-a129-upd-0113.pdf>. OMB requires credit granting agencies to establish and publish in the **Federal Register** specific eligibility criteria for lender or servicer participation in Federal credit programs, including qualification requirements for principal officers and staff of the lender or servicer. OMB Circular A-129, p. 12.

(2) Federally Supervised Lenders

Currently, the regulation requires that all lenders approved for participation in the SFHGLP must provide additional information to demonstrate its ability to originate, underwrite and service loans. However, the Agency has determined that lenders that are Federally supervised and meet the criteria in the current § 3555.51(a)(8) have demonstrated ability and should not be required to provide additional documentation. The proposal will alleviate the process for obtaining Agency approval, reduce the required lender documentation and reflect a more streamlined process for Federally supervised lenders.

A summary of the changes includes amending 7 CFR 3555.51(a)(8) to eliminate (a)(8)(iv) because it refers to the Office of Thrift Supervision (OTS), which no longer exists. Furthermore, the current § 3555.51(a)(9) and (10) is intended to provide a path for lenders that are not regulated by state or federal agencies and do not meet the requirements of (a)(1) through (8) an opportunity to participate in the SFHGLP. Therefore, the Agency also proposes to amend the introductory texts of § 3555.51(a)(9) and (10) to clarify that when lenders cannot meet the demonstrated ability criteria outlined under § 3555.51(a)(1) through (8), those lenders must submit additional documentation to demonstrate their ability to originate loans.

(3) Approved Lender Participation Requirements

Lenders must meet applicable requirements in order to begin and continue participation in the SFHGLP. Currently, the Agency generally reviews each lender every 2 years to ensure compliance. However, this process is not codified in the regulations. Therefore, the Agency proposes to amend § 3555.51 and add paragraph (c) under SFHGLP participation requirements, to clarify that lender eligibility will be reviewed every 2 years for continued participation in the SFHGLP. The proposal will also add a requirement that principal officers of lenders must have a minimum of 2 years of experience in originating or servicing guaranteed mortgage loans as recommended in OMB Circular A-129. In order to be deemed eligible for continued lender participation in the SFHGLP, the lender and its principal officers must continue to meet all the criteria as outlined in § 3555.51 which, as proposed to be amended, would include (a) specific experience in

underwriting and servicing loans, (b) financial requirements for non-supervised lenders, and (c) SFHGLP participation requirements.

(4) Builder-Contractor Requirements

At present, § 3555.105(b)(4) and (5) require that builder-contractors have acceptable credit histories free of judgments, collections, or liens related to previous projects the builder-contractor was involved with and that they not have a criminal history. Currently, the lender is responsible for obtaining the [builder-contractor's] credit history and background checks. However, the Agency has determined that these requirements are not the industry standard. The builder-contractor's ability to participate in such projects should be based on the applicant's and lender's review of the builder-contractor's experience, reputation and financial ability to complete the project in a timely, efficient and competent manner. The proposal would remove § 3555.105(b)(4) and (5). The changes would streamline screening requirements, reduce administrative burden on the lender and would also align with other Federal programs, including the Direct Section 502 loan program, which do not have such requirements for builder-contractors. The Agency is specifically soliciting comments on the impact of eliminating the credit and criminal background checks for building contractors.

(5) Applicants Delinquent on Child Support

Currently, the Agency does not have explicit instructions on how lenders should treat an applicant's delinquent child support payments that are subject to collection by federal administrative offset. The Agency considers delinquent child support payments subject to administrative offset a significant derogatory obligation and an indication that an applicant does not have the reasonable ability or willingness to meet their obligations. Furthermore, it would be against the federal government's interest to guarantee a loan for an applicant from whom the federal government is simultaneously pursuing collection for a delinquent debt. Therefore, RHS proposes to amend § 3555.151(i) to specify that borrowers with delinquent child support payments subject to collection by administrative offset are ineligible unless the payments are brought current, the debt is paid in full, or otherwise satisfied.

Statutory Authority

Section 510(k) of Title V the Housing Act of 1949 (42 U.S.C. 1480(k)), as amended, authorizes the Secretary of the Department of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title.

Executive Order 12866, Classification

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Except where specified, all state and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry federal requirements. No person is required to apply for funding under SFHGLP, but if they do apply and are selected for funding, they must comply with the requirements applicable to the federal program funds. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 must be exhausted.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Environmental Policy Act

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

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Regulatory Flexibility Act

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

Executive Order 12372, Intergovernmental Review of Federal Programs

This program is not subject to the requirements of Executive Order 12372, “Intergovernmental Review of Federal Programs,” as implemented under USDA’s regulations at 7 CFR part 3015.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the federal government and Indian tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this rule, they are encouraged to contact USDA’s Office

of Tribal Relations or RD’s Native American Coordinator at: AIAN@wdc.usda.gov to request such a consultation.

Programs Affected

The program affected by this proposed rule is listed in the Catalog of Federal Domestic Assistance under Number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

Paperwork Reduction Act

This rule contains no new reporting or recordkeeping burdens under OMB control number 0575–0179 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Civil Rights Impact Analysis

Rural Development has reviewed this rule in accordance with USDA Regulation 4300–4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, marital or familial status. Based on the review and analysis of the rule and all available data, issuance of this Final Rule is not likely to negatively impact low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status.

E-Government Act Compliance

Rural Development is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA Programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

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

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(1) Email: OAC@usda.gov
USDA is an equal opportunity provider, employer, and lender.

List of Subjects in 7 CFR Part 3555

Construction, Eligible loan purpose, Home improvement, Loan programs—housing and community development, Loan terms, Mortgage insurance, Mortgages, and Rural areas.

For the reasons discussed in the preamble, the Agency is proposing to amend 7 CFR part 3555 as follows:

PART 3555—GUARANTEED RURAL HOUSING PROGRAM

■ 1. The authority citation for part 3555 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1471 *et seq.*

- 2. Amend § 3555.51 by:
 - (a) Revising paragraph (a)(8);
 - (b) Revising the introductory text of paragraphs (a)(9) and (10);
 - (c) Revising paragraph (b) and (b)(1);
 - (d) Adding paragraph (c).

The revisions and additions read as follows:

§ 3555.51 Lender eligibility.

* * * * *

(a) * * *

(8) A Federally supervised lender. Acceptable sources of Federal supervision include:

(i) Being a member of the Federal Reserve System;

(ii) The Federal Deposit Insurance Corporation (FDIC);

(iii) The National Credit Union Administration (NCUA);

(iv) The Office of the Comptroller of the Currency (OCC);

(v) The Federal Housing Finance Board regulating lenders within the Home Loan Bank (FHLB) system.

(9) If lenders cannot meet the requirements under (a)(1) through (8), they may demonstrate its ability to originate and underwrite loans by submitting appropriate documentation, examples of which include, but are not limited to: * * *

(10) A lender that proposes to service loans that cannot meet (a)(1) through (8) must demonstrate its ability by submitting appropriate documentation, examples of which include but are not limited to: * * *

(b) *Financial Requirements for Non-Supervised Lenders.* All lenders not covered in paragraph (8) of this section, must have:

(i) A minimum adjusted net worth of \$250,000, or \$50,000 in working capital plus one percent of the total volume in excess of \$25 million in guaranteed loans originated, serviced or purchased during the lender's prior fiscal year, up to a maximum required adjusted net worth of \$2.5 million, and

(ii) one or more lines of credit with a minimum aggregate of one million dollars.

* * * * *

(c) *SFHGLP participation requirements* Lenders and their agents must comply with the following requirements:

(1) Keep up to date, and comply with, all Agency regulations and handbooks, including all amendments and revisions of program requirements and policies. Lenders must also comply with all other applicable federal, state, and local laws, rules, and requirements, including those under the purview of the Consumer Financial Protection Bureau, such as the Real Estate Settlement Procedures Act and the Truth in Lending Act. Lenders who originate a minimal number loans, as determined by the Agency, in a 24 month time frame may be required to take updated training to ensure a lender's continued knowledge of the program;

(2) Regularly check Rural Development's website for new issuances related to the program;

(3) Underwrite loans according to Rural Development regulations and process and approve loans in accordance with program instructions;

(4) Review loan applications for accuracy and completeness;

(5) Ensure that applicant income limits are not exceeded;

(6) Ensure that borrowers have adequate loan repayment ability and acceptable credit histories;

(7) Ensure that loss claims include only supportable costs;

(8) Cooperate fully with Agency reporting and monitoring requirements;

(9) Comply with limitations on loan purposes, loan limitations, interest rates, and loan terms;

(10) Inform Rural Development immediately after the sale, transfer, or change of servicers of any Agency guaranteed loan;

(11) Maintain reasonable and prudent business practices consistent with generally accepted mortgage industry standards, such as maintaining fidelity bonding;

(12) Remain responsible for servicing even if servicing has been contracted to a third party;

(13) Use Rural Development, HUD, Fannie Mae, or Freddie Mac forms, unless otherwise approved by Rural Development;

(14) Maintain eligibility under paragraph (a) of this section;

(15) Notify Rural Development if there are any material changes in organization or practices;

(16) Be neither debarred nor suspended from participation in Federal programs, not debarred, suspended or sanctioned under state licensing and certification laws and regulations;

(17) Notify Rural Development in the event of its bankruptcy or insolvency;

(18) Remain free from default and delinquency on any debt owed to the Federal government;

(19) Allow Rural Development or its representative access to the lender's records, including, but not limited to, records necessary for on-site and desk reviews of the lender's operation and the operations of any of its agents to verify compliance with Agency regulations and guidelines;

(20) Maintain adequate operational quality control and reporting procedures to prevent fraud;

(21) Maintain complete loan files with all required documentation that is accessible by Agency upon request for review;

(22) Execute a lender's agreement provided by Rural Development;

(23) Evidence that principal officers must have a minimum of two years of experience in originating or servicing guaranteed mortgage loans; and

(24) Provide documentation as required by the Agency to be reviewed every two years for continued lender participation.

* * * * *

§ 3555.105 [Amended]

■ 4. Amend § 3555.105 by removing paragraphs (b)(4) and (5) and renumbering paragraph (b)(6) as appropriate.

■ 5. Amend § 3555.151 by adding paragraph (i)(9) to read as follows:

§ 3555.151 Eligibility Requirements.

* * * * *

(i) * * *

(9) Applicants with delinquent child support payments subject to collection by administrative offset are ineligible unless the payments are brought current, the debt is paid in full, or otherwise satisfied.

* * * * *

Chadwick Parker,

Acting Administrator, Rural Housing Service.

[FR Doc. 2021-11937 Filed 6-8-21; 8:45 am]

BILLING CODE 3410-XV-P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 212

RIN 0412-AA97

United States Agency for International Development: Regulation To Implement the Freedom of Information Act

AGENCY: Agency for International Development (USAID).

ACTION: Proposed rule.

SUMMARY: This regulation updates certain procedures and standards USAID follows in processing requests for records under the Freedom of Information Act ("FOIA").

DATES: Submit comments on or before August 9, 2021.

ADDRESSES: Address all comments for this proposed rule to Alecia S. Sillah, Supervisory FOIA Team Lead, Bureau for Management, Office of Management Services, Information Records Division, U.S. Agency for International Development, electronically at foia@usaid.gov.

FOR FURTHER INFORMATION CONTACT: Christopher A. Colbow, Bureau for Management, Office of Management Services, Information Records Division, U.S. Agency for International Development, 1300 Pennsylvania Avenue, USAID Annex, Room 2.4.0A, Washington, DC 20523; tel. 202-916-4661; foia@usaid.gov.

SUPPLEMENTARY INFORMATION:

I. Background

This rulemaking proposes revisions to 22 CFR part 212, USAID's regulations

under the Freedom of Information Act (FOIA) and the Privacy Act. The Agency is revising its regulations to update several procedural provisions, including methods for submitting requests under the FOIA, and initial appeals of denials of requests, for records of the Office of the USAID Inspector General (OIG). The Inspector General Act of 1978, as amended (5 U.S.C. App. 3) was enacted to, “create independent and objective units,” to perform investigative and monitoring functions within Executive Departments and Agencies of the Federal Government, including USAID. These revisions will further the OIG’s independence and streamline the processing of requests that seek OIG records.

List of Subjects in 22 CFR Part 212

Freedom of information.

For the reasons stated in the preamble, USAID proposes to revise 22 CFR part 212 to read as follows:

PART 212—PUBLIC INFORMATION

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Sec.

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Authority: Pub. L. 114–185, 130 Stat. 538.

Subpart A—General Provisions

§ 212.1 Purpose and scope.

This subpart contains the rules that the United States Agency for International Development (hereinafter “USAID” or “the Agency”) follows in processing requests for records under the Freedom of Information Act (“FOIA”), 5 U.S.C. 552. The rules in this subpart should be read in conjunction with the text of the FOIA. Requests made by individuals for records about themselves under the Privacy Act of 1974, are processed under subpart O. Definitions of FOIA terms are referenced in subpart L.

§ 212.2 Policy.

(a) *General policy.* As a general policy, USAID follows a balanced approach in administering the FOIA. USAID recognizes the right of the public to access information in the possession of the Agency. USAID also recognizes the legitimate interests of organizations or persons who have submitted records to the Agency or who would otherwise be affected by release of records. USAID has no discretion to release certain records, such as trade secrets and confidential commercial information, prohibited from release by law. USAID’s policy calls for the fullest responsible disclosure consistent with those requirements of administrative necessity and confidentiality which are recognized under the FOIA.

(b) *Definitions.* For purposes of subparts A through K, M, and O of this part, *record* means information regardless of its physical form or characteristics including information created, stored, and retrievable by electronic means that is created or obtained by the Agency and under the control of the Agency at the time of the request, including information maintained for the Agency by an entity under Government contract for records management purposes. It does not include records that are not already in existence and that would have to be created specifically to respond to a

request. Information available in electronic form shall be searched and compiled in response to a request unless such search and compilation would significantly interfere with the operation of the Agency’s automated information systems.

§ 212.3 Records available on the Agency’s website.

Information that is required to be published in the **Federal Register** under 5 U.S.C. 552(a)(1) is regularly updated by the Agency and found on its public website: <https://www.usaid.gov/foia-requests>, or for records of the Office of the USAID Inspector General (OIG), on the FOIA page of OIG’s public website: <https://oig.usaid.gov/FOIA>. Records required by FOIA to be made available for public inspection in an electronic format under 5 U.S.C. 552(a)(2) are available on the Agency’s and OIG’s public websites.

Subpart B—Proactive Disclosures of Agency Records

§ 212.4 Materials available for public inspection and copying.

In accordance with this subpart, the Agency shall make the following materials available for public inspection in an electronic format:

(a) Operational policy in USAID’s Automated Directives System (ADS) which have been adopted by the Agency and are not published in the **Federal Register**;

(b) Administrative staff manuals and instructions to staff that affect any member of the public; and

(c) Copies of all records, regardless of form or format, which have been released pursuant to a FOIA request, and which have been requested three (3) or more times, or because of the nature of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. The Agency shall decide on a case by case basis whether records fall into this category, based on the following factors:

(1) Previous experience with similar records;

(2) The particular characteristics of the records involved, including their nature and the type of information contained in them; and

(3) The identity and number of requesters and whether there is widespread media, historical, academic, or commercial interest in the records.

Subpart C—Requirements for Making Requests

§ 212.5 How to make a request for records.

(a) *General information.* USAID has a de-centralized system for responding to FOIA requests for all USAID records. The USAID FOIA operations are broken down into two component FOIA Offices: The Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD) and the Office of the USAID Inspector General (OIG).

(b) The Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD) is the central processing point for requests for USAID records contained in Washington, DC and its overseas missions. All FOIA requests for USAID records (other than OIG records) must be submitted to this office. To make a request for the Agency's records, a requester may send request via one of the following mediums:

(1) *By Email:* foia@usaid.gov. Please include your mailing address, email address, phone number, and fee category with your request. While our FOIA Specialists are happy to answer questions about the FOIA Program and/or help you formulate your request over the phone, please be advised that FOIA requests cannot be accepted by phone.

(2) *Online Portal:* To submit your request online, please click the subsequent link: <https://foiarequest.usaid.gov/index.aspx>.

(3) *By U.S. Postal Mail:* United States Agency for International Development Bureau for Management, Office of Management Services, Information and Records Division, USAID Annex, Room 2.4.0A, Washington, DC 20523, (202) 916-4661.

(4) *By Fax:* (202) 916-4990.

(c) *OIG records.* The Inspector General has received delegated authority from USAID's Administrator to process requests and issue determinations with respect to requests, and appeals of initial denials of requests, for the OIG's records. To make a request for OIG records, a requester may send a request via one of the following mediums:

(1) *By email:* foiaoig@usaid.gov. Please include your mailing address, email address, phone number, and fee category with your request.

(2) *Online Portal:* Please submit a request online via the OIG website at <https://oig.usaid.gov/FOIA>.

(3) *By U.S. Postal Mail:* United States Agency of International Development, Office of Inspector General, Office of General Counsel, 1300 Pennsylvania Avenue NW, Suite 6.06-D, Washington, DC 20523, (202) 712-1150.

(d) *Third party requests.* Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized consent form signed by the person who is the subject of the records, or a signed declaration by that person, made under penalty of perjury pursuant to 28 U.S.C. 1746, authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (*e.g.*, a copy of a death certificate or an obituary). In addition, requesters may present an argument that there exists an overriding public interest in disclosure of the information related to official misconduct by producing evidence that alleged Government impropriety occurred. As an exercise of administrative discretion, the component's FOIA office can require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(e) *Description of records sought.* Requesters must describe the records sought in sufficient detail to enable the component's FOIA office personnel to locate them with a reasonable amount of effort. To the extent possible, requesters should include specific information that may assist in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. In general, requesters should include as much detail as possible about the specific records or the types of records that they are seeking. Before submitting their requests, requesters may contact the component FOIA office's FOIA contact or FOIA Public Liaison to discuss the records they are seeking and to receive assistance in describing the records. If, after receiving a request, the component's FOIA office determines that it does not reasonably describe the records sought, the component's FOIA office shall inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the component FOIA office's designated FOIA Specialist or its FOIA Public Liaison, each of whom is available to assist the requester in reasonably describing the records sought. If a request does not reasonably describe the records sought, the component FOIA office's response to the request may be delayed or denied.

Subpart D—Responsibility for Responding to Requests

§ 212.6 Designation of authorized officials.

(a) The Assistant Administrator for the Bureau for Management (M) serves as the USAID Chief FOIA Officer. The Chief FOIA Officer has overall responsibility for USAID compliance with the FOIA. The Chief FOIA Officer provides high level oversight and support to USAID's FOIA programs, and recommends adjustments to agency practices, personnel, and funding as may be necessary to improve FOIA administration, including through an annual Chief FOIA Officers Report submitted to the U.S. Department of Justice. The Chief FOIA Officer is responsible for offering training to agency staff regarding their FOIA responsibilities; serves as the primary liaison with the Office of Government Information Services and the Office of Information Policy; and reviews, not less frequently than annually, all aspects of the Agency's administration of the FOIA to ensure compliance with the FOIA's requirements.

(b) The Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD) is the component FOIA office that receives, tracks, and processes all of USAID's FOIA requests, other than requests for OIG records, to ensure transparency within the Agency.

(c) The Deputy Director, Bureau for Management, Office of Management Services (M/MS/OD) serves as the USAID FOIA Appeals Officer for requests for all USAID records other than OIG records. The FOIA Appeals Officer is responsible for receiving and acting upon appeals from requesters whose initial FOIA requests for USAID records (other than OIG records) have been denied, in whole or in part.

(d) The Deputy Inspector General serves as the USAID OIG FOIA Appeals Officer for appeals of requests for OIG records.

(e) The Chief, Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD) serves as USAID's FOIA Officer and USAID's FOIA Public Liaison. The FOIA Officer is responsible for program direction, original denials, and policy decisions required for effective implementation of USAID's FOIA program. The FOIA Public Liaison serves as a supervisory official to whom a FOIA requester can raise concerns about the services received, following an initial response from the FOIA staff. In addition, the FOIA Public Liaison assists, as appropriate, in reducing delays, increasing transparency and

understanding of the status of requests, and resolving disputes.

(f) The General Counsel to the Inspector General serves as the OIG's FOIA Officer and FOIA Public Liaison.

(g) The Supervisory FOIA Team Lead is the Principal Operations Officer within the component's FOIA office for the processing of FOIA requests and release determinations.

(h) The FOIA Specialist also known as the Government Information Specialist (GIS) is responsible for processing requests and preparing records for release when such releases are authorized by the FOIA. They do not have the authority to make denials, including "no records" responses.

(i) The General Counsel (GC), FOIA Backstop Attorney Advisor has responsibility for providing legal advice on all USAID matters regarding or resulting from the FOIA (other than OIG matters). Upon request, GC advises M/MS/IRD on release and denial decisions, and apprises the FOIA Office of all significant developments with respect to the FOIA.

(j) OIG attorneys have responsibility for providing legal advice on all requests and appeals related to OIG records.

(k) Each Attorney Advisor designated to provide legal advice to USAID Bureaus/Independent Offices (B/IOs) is responsible for providing, at M/MS/IRD's request, legal advice on FOIA requests assigned to those B/IOs.

(l) The designated FOIA Liaison Officer (FLO) in each USAID Bureau and Office is responsible for tasking and facilitating the collection of responsive records and monitoring the production of records to M/MS/IRD.

§ 212.7 Processing of request.

(a) *In general.* In determining which records are responsive to a request, the component's FOIA office ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the component's FOIA office shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The FOIA Officer is authorized to grant or to deny any requests for records that are maintained by the Agency (other than OIG records). The OIG FOIA Officer is authorized to grant or to deny any requests for records maintained by OIG.

(c) *Consultation, referral, and coordination.* When reviewing records located by the Agency in response to a request, the component's FOIA office shall determine whether another agency of the Federal Government is better able to determine whether the record is

exempt from disclosure under the FOIA. All consultations and referrals received by the Agency will be handled according to the date that the first agency received the perfected FOIA request. As to any such record, the component's FOIA office shall proceed in one of the following ways:

(1) *Consultation.* When records originated with USAID, but contain within them information of substantial interest to another agency, or other Federal Government office, the component's FOIA office should consult with that other agency prior to making a release determination.

(2) *Referral.* (i) When a component's FOIA office believes that a different Department, agency, or component, is best able to determine whether to disclose the record, the component's FOIA office will refer the responsibility for responding to the request regarding that record, as long as the referral is to an agency that is subject to the FOIA. Ordinarily, the agency that originated the record will be presumed to be best able to make the disclosure determination. However, if the component's FOIA office and the originating agency jointly agree that the former is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever the component's FOIA office refers any part of the responsibility for responding to a request to another agency, it shall document the referral, maintain a copy of the record that it refers, and notify the requester of the referral and inform the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA contact information.

(iii) Re-routing of misdirected requests. Where a component's FOIA office determines that a request was misdirected within the agency, the receiving component's FOIA office must route the request to the FOIA office of the proper component within the agency.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the component's FOIA office will coordinate with the originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination will then be

conveyed to the requester by the component's FOIA office.

(d) *Classified information.* On receipt of any request involving classified information, the component's FOIA office must determine whether the information is currently and properly classified in accordance with applicable classification rules. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another agency under any applicable executive order concerning the classification of records, the component's FOIA office must refer the responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever USAID's record contains information that has been derivatively classified (for example, when it contains information classified by another agency), the component's FOIA office must refer the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(e) *Furnishing records.* The component's FOIA office shall furnish copies only of records that the Agency has in its possession. The Agency is not compelled to create new records. The Agency is not required to perform research for a requester. The component's FOIA office is required to furnish only one copy of a record. If information exists in different forms, the component's FOIA office will provide the record in the form that best conserves government resources. Requests may specify the preferred form or format (including electronic formats) for the records sought by the requester. The component's FOIA office will accommodate the form or format request if the record is readily reproducible in that form or format.

(f) *Archival records.* The Agency ordinarily transfers records in accordance with its retirement authority, included in ADS 502, to the National Archives and Records Administration. These records become the physical and legal custody of the National Archives. Accordingly, requests for retired Agency records should be submitted to the National Archives by mail addressed to Special Access and FOIA Staff (NWCTF), 8601 Adelphi Road, Room 5500, College Park, MD 20740 by fax to (301) 837-1864; or by email to specialaccess_foia@nara.gov.

(g) *Poor copy.* If USAID cannot make a legible copy of a record to be released, the Agency is not required to reconstruct it. Instead, the component's

FOIA office will furnish the best copy possible and note its poor quality in the component's FOIA office reply.

Subpart E—Timing of Responses to Requests

§ 212.8 Time limits.

(a) *In general.* The component's FOIA office ordinarily will respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) The component's FOIA office shall designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. The component's FOIA office may designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. Among the factors the component's FOIA office may consider are, the number of pages involved in processing the request and the need for consultations or referrals. The component's FOIA office shall advise requesters of the track into which their request falls and, when appropriate, shall offer the requesters an opportunity to narrow their request so that it can be placed in a different processing track.

(2) The component's FOIA office shall generally process requests in each track on a "first-in, first-out" basis.

(c) *Unusual circumstances.* Whenever the statutory time limit for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and the component's FOIA office extends the time limit on that basis, the component's FOIA office shall, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. Where the extension exceeds 10 working days, the component's FOIA office shall, in the written notice, notify the requester of the right to contact the component's FOIA office's FOIA Public Liaison, or seek dispute resolution services from the Office of Government Information Services (OGIS). In addition, the component's FOIA office shall, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing.

(d) *Aggregating requests.* For the purposes of satisfying unusual circumstances under the FOIA, the component's FOIA office may aggregate requests in cases where it reasonably

appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. The component's FOIA office shall not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.

(2) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an "urgency to inform" the public on the topic. As a matter of administrative discretion, the component's FOIA office may waive the formal certification requirement.

(3) The component's FOIA office shall notify the requester within 10 calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

Subpart F—Responses to Requests

§ 212.9 Responsibility for responding to requests.

(a) *In general.* The component's FOIA office should, to the extent practicable, communicate with requesters having access to the internet using electronic means, such as email or web portal.

(b) *Acknowledgments of requests.* The component's FOIA office shall acknowledge the request and assign it an individualized tracking number. The component's FOIA office shall include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(c) *Grants of requests.* Once the component's FOIA office makes a determination to grant a request in full or in part, it shall notify the requester in writing. The component's FOIA office also shall inform the requester of any fees charged and shall disclose the requested records to the requester promptly upon payment of any applicable fees.

(d) *Consultations and referrals.* Whenever the component's FOIA office consults with another Federal Government office over the releasability of a record, the component's FOIA office shall notify the requester of the consultation and inform the requester of the name(s) of the agency or office with which the consultation is taking place. Whenever the component's FOIA office refers any part of the responsibility for responding to a request to another Federal Government office, the component's FOIA office shall document the referral, maintain a copy of the record that it refers, notify the requester of the referral, and inform the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA contact information.

(e) *Adverse determinations of requests.* If the component's FOIA office has made an adverse determination denying a request in any respect, the component's FOIA office shall notify the requester of that determination in writing, and provide the contact information for the FOIA Public Liaison, as well as a description of the requester's right to seek mediation services from the Office of Government Information Services (OGIS). Adverse determinations, or denials of requests, include decisions that: The requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been

destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. A response will provide an estimate of the volume of any records or any information withheld. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(f) *Information furnished.* All denials are in writing and describe in general terms the material withheld; state the reasons for the denial, including, as applicable, a reference to the specific exemption of the FOIA authorizing the withholding; explain your right to appeal the decision and identify the official to whom you should send the appeal; and are signed by the person who made the decision to deny all or part of the request. Records disclosed in part must be marked clearly to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted must also be indicated on the record, if technically feasible.

(g) *Conducting searches.* USAID performs a diligent search for records to satisfy your request. Nevertheless, the Agency may not be able to find the records requested using the information provided, or the records may not exist.

Subpart G—Confidential Commercial Information

§ 212.10 Policy and procedure.

(a) *Definitions.* (1) *Confidential commercial information* means commercial or financial information obtained by the Agency from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Business submitter* means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides information, either directly or indirectly to the Federal Government.

(b) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, either at the time of submission or within a reasonable time thereafter, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations shall expire 10 years after the date of the submission unless the submitter

requests and provides justification for a longer designation period.

(c) *When notice to business submitters is required.* (1) The component's FOIA office shall promptly provide written notice to a business submitter of confidential commercial information whenever records containing such information are requested under the FOIA if, after reviewing the request, the responsive records, and any appeal by the requester, the component's FOIA office determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the business submitter as information considered protected from disclosure under Exemption 4; or

(ii) The component's FOIA office has a reason to believe that the requested information may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure under that exemption or any other applicable exemption.

(2) The notice shall either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

(d) *Exceptions to business submitter notice requirements.* The notice requirements of this section shall not apply if:

(1) The component's FOIA office determines that the information is exempt under the FOIA;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The designation made by the business submitter appears obviously frivolous, except that, in such a case, the component's FOIA office shall give the business submitter written notice of any final decision to disclose the information and must provide that notice within a reasonable number of days prior to a specified disclosure date.

(e) *Opportunity to object to disclosure.*

(1) The component's FOIA office shall specify a reasonable time period within which the business submitter must respond to the notice referenced in this section. If a business submitter has any objections to disclosure, the business

submitter should provide the component's FOIA office with a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the business submitter must explain why the information constitutes a trade secret or commercial or financial information that is privileged or confidential.

(2) A business submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information.

Information received by the component's FOIA office after the date of any disclosure decision shall not be considered by the component's FOIA office. Any information provided by a business submitter under this subpart may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* The component's FOIA office shall consider a business submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* Whenever the component's FOIA office decides to disclose information over the objection of a business submitter, the component's FOIA office shall provide the business submitter written notice, which shall include:

(1) A statement of the reasons why each of the business submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the component's FOIA office shall promptly notify the business submitter.

(i) *Requester notification.* The component's FOIA office shall notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

Subpart H—Administrative Appeals

§ 212.11 Appeal procedures.

The component's FOIA office must inform the requester of the reasons for the denial and the requester's right to appeal the denial to the FOIA Appeals

Officer whenever a FOIA request is denied.

(a) *What a requester can appeal.* A requester may appeal the withholding of a document or denial of a fee waiver request. A requester may contest the type or amount of fees that were charged, or may appeal any other type of adverse determination under the FOIA. A requester may also appeal because USAID failed to conduct an adequate search for the documents requested. However, a requester may not file an administrative appeal for the lack of a timely response. A requester may administratively appeal any portion denied when their request is granted in part and denied in part.

(b) *Requirements for making an appeal.* A requester may appeal any adverse determinations to the component's FOIA office. The requester must make the appeal in writing. To be considered timely, the appeal must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the response. The appeal should clearly identify the component FOIA office's determination that is being appealed and the assigned request number. To facilitate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, "Freedom of Information Act Appeal."

(c) *Adjudication of appeals.* (1) The Deputy Director of the Bureau for Management Services or designee will conduct de novo review and make the final determination on the appeals related to all Agency records other than OIG records. The Deputy Inspector General will conduct de novo review and make the final determination on the appeals relating to OIG records.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(d) *Decisions on appeals.* A decision on an appeal must be made in writing. A decision that upholds the component FOIA office's determination will contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Services of the National Archives and Records Administration (OGIS) as a non-exclusive alternative to litigation. Mediation is a voluntary process. If the component's FOIA office agrees to participate in the mediation services provided by OGIS, it will actively engage as a partner to the process in an

attempt to resolve the dispute. If the component FOIA office's decision is remanded or modified on appeal, the requester will be notified of that determination in writing. The component's FOIA office will thereafter further process the request in accordance with that appeal determination and respond directly to the requester.

(e) *When appeal is required.* Before seeking review by a court of the component FOIA office's adverse determination, a requester generally must first submit a timely administrative appeal.

(f) *Where to file an appeal.* An appeal (other than appeals related to OIG records) may be filed by sending a letter to: FOIA Appeals Officer, Bureau for Management, Deputy Director, Office of Management Services, U.S. Agency for International Development, USAID Annex, M/MS, Room 10.8 OD, Washington, DC 20523; or by email at foia@usaid.gov. An appeal relating to OIG records may be filed by sending a letter to: Deputy Inspector General, Office of Inspector General, U.S. Agency for International Development, Suite 6.06-D, RRB, 1300 Pennsylvania Avenue NW, Washington, DC 20523-4601; or by email at foiaoig@usaid.gov. There is no charge for filing an administrative appeal.

§ 212.12 Mediation and dispute services.

The Office of Government Information Services of the National Archives and Records Administration (OGIS) is a Freedom of Information Act (FOIA) resource for the public and the government. Congress has charged OGIS with reviewing FOIA policies, procedures and compliance of Federal agencies and to recommend changes to the FOIA. OGIS' mission also includes providing dispute resolution services between Federal agencies and requesters. OGIS works as a non-exclusive alternative to litigation. When the component's FOIA office makes a determination on a request, the component's FOIA office shall offer the services of the FOIA Public Liaison, and will notify requesters of the mediation services provided by OGIS. Specifically, the component's FOIA office will include in the component's FOIA office's notification to the requester:

(a) The right of the requester to seek assistance from the FOIA Public Liaison of the component's FOIA office, and in the case of an adverse determination;

(b) The right of the requester to seek dispute resolution services from the FOIA Public Liaison of the component's FOIA office or the Office of Government Information Services.

Subpart I—Preservation of Records

§ 212.13 Policy and procedures.

The component's FOIA office shall preserve all correspondence relating to the requests it receives under this subpart, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration (NARA). Under no circumstances shall records be sent to a Federal Records Center, transferred to the permanent custody of NARA, or destroyed while they are the subject of a pending request, appeal, or civil action under the FOIA.

Subpart J—Fees

§ 212.14 Fees to be charged—general.

(a) *In general.* The component's FOIA office shall charge for processing requests under the FOIA in accordance with the provisions of this section and with the Office of Management and Budget (OMB) Guidelines. In order to resolve any fee issues that arise under this section, the component's FOIA office may contact a requester for additional information. The component's FOIA office shall ensure that search, review, and duplication are conducted in the most efficient and the least expensive manner. The component's FOIA office ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. The component FOIA office's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information.

(2) *Direct costs* are those expenses that the Agency incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(3) *Duplication* is reproducing a copy of a record, or of the information

contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. Agencies may seek verification from the requester that the request is in furtherance of scholarly research.

(5) *Fee waiver* is a waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied, including that the information is in the public interest and is not requested for a commercial interest.

(6) *Noncommercial scientific institution* is an institution that is not operated on a "commercial" basis, as defined in paragraph (b)(1) of this section and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use.

(7) *Representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast "news" to the public at large and publishers of periodicals that disseminate "news" and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. A request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use. "Freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, components shall also consider a requester's past publication record in making this determination.

(8) *Requester category* is one of the three categories that agencies place

requesters in for the purpose of determining whether a requester will be charged fees for search, review, and duplication. The three categories are: Commercial requesters; non-commercial scientific or educational institutions or news media requesters; and all other requesters.

(9) *Review* is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(10) *Search* is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(c) *Charging fees.* In responding to FOIA requests, the component's FOIA office shall charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section.

(1) *Search.* Requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees. Search fees shall be charged for all other requesters, subject to the restrictions of paragraph (d) of this section. The component's FOIA office may properly charge for time spent searching even if they do not locate any responsive records or if they determine that the records are entirely exempt from disclosure.

(2) *Duplication.* Duplication fees shall be charged to all requesters, subject to the restrictions of paragraph (d) of this section. The component's FOIA office shall honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible by the component's FOIA office in the form or format requested. Where photocopies are supplied, the component's FOIA office shall provide one copy per request at a cost of ten cents per page. For copies of records produced on tapes, disks, or other media, the direct costs of producing the

copy, including operator time shall be charged. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For other forms of duplication, the component's FOIA office shall charge the direct costs.

(3) *Review.* Review fees shall be charged to requesters who make commercial use requests. Review fees shall be assessed in connection with the initial review of the record, *i.e.*, the review conducted by the component's FOIA office to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with the component's FOIA office re-review of the records in order to consider the use of other exemptions may be assessed as review fees.

(d) *Restrictions on charging fees.* (1) No search fees will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media, unless the records are sought for commercial use.

(2) When the component's FOIA office determines that unusual circumstances apply to the processing of a request, and the component's FOIA office has provided timely written notice to the requester, the delay is excused for an additional 10 days. If the component's FOIA office fails to comply with the extended time limit, it may not charge search fees (or for requesters with preferred fee status, may not charge duplication fees) except as provided in (d)(2)(i) and (ii) of this section.

(i) *Exception:* If unusual circumstances apply and more than 5000 pages are necessary to respond to the request, the component's FOIA office may charge search fees (or, for requesters in preferred fee status, may charge duplication fees) if timely written notice has been made to the requester and the component's FOIA office has discussed with the requester via written mail, electronic mail, or telephone (or made not less than 3 good-faith attempts to do so) how the requester could effectively limit the scope of the request.

(ii) *Court Determination that exceptional circumstances exist:* If a court determines that exceptional circumstances exist, the component's FOIA office's failure to comply with a

time limit shall be excused for the length of time provided by the court order.

(3) If the component's FOIA office fails to comply with the time limits in which to respond to a request, and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees.

(4) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(5) Except for requesters seeking records for a commercial use, the component's FOIA office shall provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(6) When, after first deducting the 100 free pages (or its cost equivalent) and the first two hours of search, a total fee calculated under paragraph (c) of this section is \$25.00 or less for any request, no fee will be charged.

(e) *Notice of anticipated fees in excess of \$25.00.* (1) When the component's FOIA office determines or estimates that the fees to be assessed in accordance with this section will exceed \$25.00, the component's FOIA office shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component's FOIA office shall advise the requester accordingly. If the requester is a noncommercial use requester, the notice shall specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and shall advise the requester whether those entitlements have been provided.

(2) In cases in which a requester has been notified that the actual or estimated fees are in excess of \$25.00, the request shall not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the

requester seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. The component's FOIA office is not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the component's FOIA office estimates that the total fee will exceed that amount, the component's FOIA office shall toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The component's FOIA office shall inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) The component's FOIA office shall make available their FOIA Public Liaison or other FOIA Specialists to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Although not required to provide special services, if the component's FOIA office chooses to do so as a matter of administrative discretion, the direct costs of providing the service shall be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(g) *Charging interest.* The component's FOIA office may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges shall be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the component's FOIA office. The component's FOIA office shall follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* When the component's FOIA office reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the component's FOIA office may aggregate those requests and charge accordingly. The component's FOIA office may presume that multiple

requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, the component's FOIA office will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters shall not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) or (3) of this section, the component's FOIA office shall not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.*, payment before copies are sent to a requester) is not an advance payment.

(2) When the component's FOIA office determines or estimates that a total fee to be charged under this section will exceed \$250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. The component's FOIA office may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to the component's FOIA office within 30 calendar days of the billing date, the component's FOIA office may require that the requester pay the full amount due, plus any applicable interest on that prior request, and the component's FOIA office may require that the requester make an advance payment of the full amount of any anticipated fee before the component's FOIA office begins to process a new request or continues to process a pending request or any pending appeal. If the component's FOIA office has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which the component's FOIA office requires advance payment, the request shall not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the component FOIA office's fee determination, the request will be closed.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the component's FOIA office shall inform the requester of the contact information for that program.

(k) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request shall be furnished without charge or at a reduced rate below the rate established under paragraph (c) of this section, where the component's FOIA office determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government, the component's FOIA office shall consider all four of the following factors:

(i) The subject of the request must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, the component's FOIA office shall not make value judgments about whether the information at issue is "important" enough to be made public.

(3) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the component's FOIA office shall consider the following factors:

(i) The component's FOIA office shall identify any commercial interest of the requester, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure. The component's FOIA office ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) Requests for a waiver or reduction of fees should be made when the request is first submitted to the component's FOIA office and should address the criteria referenced in this section. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester shall be required to pay any costs incurred up to the date the fee waiver request was received. A requester may appeal the denial of a fee waiver.

§ 212.15 Fees to be charged—requester categories.

(a) The following specific fees are charged for services rendered:

(1) Commercial Use:

Search: \$40.00 per hour.

Search costs will be assessed even though no records may be found or even if, after review, there is no disclosure or records.

Review: \$55.00 per hour.

Duplication: 10¢ per page.

(2) Educational & Non-Commercial Scientific Institutions

Search: No fee.

Review: No fee.

Duplication: 10¢ per page after the first 100 pages.

(3) Representatives of the News Media

Search: No fee.

Review: No fee.

Duplication: 10¢ per page after the first 100 pages.

(4) All Others

Search: Same as "Commercial Users" except the first two hours shall be furnished without charge.

Review: No fee.

Duplication: 10¢ per page after the first 100 pages.

(b) If copies of records are provided in other than paper format (such as on microfiche, video tape, or as electronic data files), or other than first-class mail is requested or required, the requester is charged the actual cost of providing these additional services.

Subpart K—FOIA Definitions

§ 212.16 Glossary.

As used in this part:

Administrative FOIA Appeal is an independent review of the initial determination made in response to a FOIA request. Requesters who are dissatisfied with the response made on their initial request have a statutory right to appeal the initial determination made by the component's FOIA office.

Agency is any executive agency, military agency, government corporation, government-controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency. Thus, USAID is an agency.

Complex request is a request that typically seeks a high volume of material or requires additional steps to process such as the need to search for records in multiple locations.

Consultation is when USAID locates a record that contains information of substantial interest to another agency, and the component's FOIA office asks for the views of that other agency on the disclosability of the records before any final determination is made.

Discretionary disclosure is information that the component's FOIA office releases even though it could have been withheld under one of the FOIA's exemptions.

Duplication is reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

Electronic record is any information that is recorded in a form that only a computer can process and that satisfies the definition of a Federal record per the *Federal Records Act*. Federal electronic records are not necessarily kept in a “recordkeeping system” but may reside in a generic electronic information system or are produced by an application such as word processing or electronic mail.

Exemptions are nine categories of information that are not required to be released in response to a FOIA request because release would be harmful to a government or private interest. These categories are called “exemptions” from disclosures.

Expedited processing is the FOIA response track granted in certain limited situations, specifically when a FOIA request is processed ahead of other pending requests.

Freedom of Information Act or FOIA is a United States federal law that grants the public access to information possessed by government agencies. Upon written request, U.S. government agencies are required to release information unless it falls under one of nine exemptions listed in the Act.

Frequently requested records are records that have been requested three (3) or more times from the component's FOIA office.

Multi-track processing is a system that divides in-coming FOIA requests according to their complexity so that simple requests requiring relatively minimal review are placed in one processing track and more complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.

Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and agencies as an alternative to litigation. OGIS also reviews agency FOIA compliance, policies, and procedures and makes recommendations for improvement. The Office is a part of the National Archives and Records Administration, and was created by Congress as part of the OPEN Government Act of 2007, which amended the FOIA.

Proactive disclosures are records made publicly available by agencies without waiting for a specific FOIA request. Agencies now post on their websites material concerning their functions and mission. The FOIA itself requires agencies to make available certain categories of information, including final opinions and orders, specific policy statements, certain

administrative staff manuals and frequently requested records.

Record means information regardless of its physical form or characteristics including information created, stored, and retrievable by electronic means that is created or obtained by the Agency and under the control of the Agency at the time of the request, including information maintained for the Agency by an entity under Government contract for records management purposes. It does not include records that are not already in existence and that would have to be created specifically to respond to a request. Information available in electronic form shall be searched and compiled in response to a request unless such search and compilation would significantly interfere with the operation of the Agency's automated information systems.

Referral occurs when an agency locates a record that originated with, or is of otherwise primary interest to another Department, agency, or component. It will forward that record to the other agency to process the record and to provide the final determination directly to the requester.

Simple request is a FOIA request that a component's FOIA office anticipates will involve a small volume of material or which will be able to be processed relatively quickly.

Subpart L—Other Rights and Services

§ 212.17 Rights and services qualified by the FOIA statute.

Nothing in this subpart shall be construed to entitle any person, as a right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Subpart M—Privacy Act Provisions

§ 212.18 Purpose and scope.

This subpart contains the rules that the USAID follows under the Privacy Act of 1974 (PA), 5 U.S.C. 552a, as amended. These rules should be read together with the text of the statute, which provides additional information about records maintained on individuals. The rules in this subpart apply to all records in systems of records maintained by the agency that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the agency. If any records retrieved pursuant to an access request under the PA are found to be exempt

from access under that Act, they will be processed for possible disclosure under the FOIA, as amended. No fees shall be charged for access to or amendment of PA records.

§ 212.19 Privacy definitions.

As used in this subpart, the following definitions shall apply:

(a) *Individual* means a citizen or a legal permanent resident alien (LPR) of the United States.

(b) *Maintain* includes maintain, collect, use, or disseminate.

(c) *Record* means any item, collection, or grouping of information about an individual that is maintained by the agency and that contains the individual's name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph.

(d) *System of records* means a group of any records under the control of the agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to an individual.

§ 212.20 Request for access to records.

(a) *In general.* Requests for access to records (other than OIG records) under the PA must be made in writing and mailed to the Bureau for Management Services, Information and Records Division at the address given in § 212.5. Requests for access to OIG records under the PA must be made in writing and mailed to the Office of General Counsel for the OIG at the address given in § 212.5.

(b) *Description of records sought.* Requests for access should describe the requested record(s) in sufficient detail to permit identification of the record(s). At a minimum, requests should include the individual's full name (including maiden name, if appropriate) and any other names used, current complete mailing address, (city, state and country). Helpful data includes the approximate time period of the record and the circumstances that give the individual reason to believe that the agency maintains a record under the individual's name or personal identifier, and, if known, the system of records in which the record is maintained. In certain instances, it may be necessary for the component's FOIA office to request additional information from the requester, either to ensure a full search, or to ensure that a record retrieved does in fact pertain to the individual.

(c) *Verification of personal identity.* The component's FOIA office will require reasonable identification of

individuals requesting records about themselves under the PA's access provisions to ensure that records are only accessed by the proper persons. Requesters must state their full name, current address, citizenship or legal permanent resident alien status, and date (city, state, and country). The request must be signed, and the requester's signature must be either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746. If the requester seeks records under another name the requester has used, a statement, under penalty of perjury, that the requester has also used the other name must be included.

(d) *Third party access.* The component's FOIA office may process third party requests, as described in this section. In the absence of a request by, or prior written consent of, the individual to whom the records pertain, the component's FOIA office will process third party requests under the FOIA. The Agency's form, AID 507-1, may be used to certify the identity and provide third party authorization.

(1) *Parents and guardians of minor children.* Upon presentation of acceptable documentation of the parental or guardian relationship, a parent or guardian of a U.S. citizen or LPR minor (an unmarried person under the age of 18) may, on behalf of the minor, request records under the PA pertaining to the minor. In any case, U.S. citizen or LPR minors may request such records on their own behalf.

(2) *Guardians.* A guardian of an individual who has been declared by a court to be incompetent may act for and on behalf of the incompetent individual upon presentation of appropriate documentation of the guardian relationship.

(3) *Authorized representatives or designees.* Third-party access to an individual's records shall be granted pursuant to a written request by, or with the prior written consent of, the individual. The designated third party must submit identity verification information described in paragraph (c) of this section.

(e) *Referrals and consultations.* If the component's FOIA office determines that records retrieved as responsive to the request were created by another Department, agency, or component it ordinarily will refer the records to the originating agency for direct response to the requester. If the agency determines that records retrieved as responsive to the request are of interest to another agency, it may consult with the other agency before responding to the request. The component's FOIA office may make agreements with other agencies to

eliminate the need for consultations or referrals for particular types of records.

(f) *Records relating to civil actions.* Nothing in this subpart entitles an individual to access to any information compiled in reasonable anticipation of a civil action or proceeding.

(g) *Time limits.* The component's FOIA office will acknowledge the request promptly and furnish the requested information as soon as possible thereafter.

§ 212.21 Request to amend or correct records.

(a) An individual has the right to request that the component's FOIA office amend a record pertaining to the individual that the individual believes is not accurate, relevant, timely, or complete.

(b) Requests to amend records must be in writing to the component's FOIA office, and mailed or delivered to the Bureau for Management, Office of Management Services, Information and Records Division (for non OIG records), or the Office of the USAID Inspector General (for OIG records) at the addresses given in § 212.5, with ATTENTION: PRIVACY ACT AMENDMENT REQUEST written on the envelope. The component's FOIA office will coordinate the review of the request with the appropriate offices of the Agency. The component's FOIA office will require verification of personal identity before it will initiate action to amend a record. Amendment requests should contain, at a minimum, identifying information needed to locate the record in question, a description of the specific correction requested, and an explanation of why the existing record is not accurate, relevant, timely, or complete. The request must be signed, and the requester's signature must be either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746. The requester should submit as much pertinent documentation, other information, and explanation as possible to support the request for amendment.

(c) All requests for amendments to records shall be acknowledged within 10 working days.

(d) In reviewing a record in response to a request to amend, the Agency shall review the record to determine if it is accurate, relevant, timely, and complete.

(e) If the Agency agrees with an individual's request to amend a record, it shall:

- (1) Advise the individual in writing of its decision;
- (2) Amend the record accordingly; and

(3) If an accounting of disclosure has been made, advise all previous recipients of the record of the amendment and its substance.

(f) If the Agency denies an individual's request to amend a record, it shall advise the individual in writing of its decision and the reason for the refusal, and the procedures for the individual to request further review. See § 171.25 of this chapter.

§ 212.22 Request for accounting of record disclosures.

(a) *How made.* Except where accountings of disclosures are not required to be kept, as set forth in paragraph (b) of this section, or where accountings of disclosures do not need to be provided to a requesting individual pursuant to 5 U.S.C. 552a(c)(3), an individual has a right to request an accounting of any disclosure that the component's FOIA office has made to another person, organization, or agency of any record about an individual. This accounting shall contain the date, nature, and purpose of each disclosure as well as the name and address of the recipient of the disclosure. Any request for accounting should identify each particular record in question and may be made by writing directly to the Appeals Officer, Bureau for Management, Office of Management Services at the address given in § 212.19.

(b) *Where accountings are not required.* The component's FOIA office is not required to keep an accounting of disclosures in the case of:

(1) Disclosures made to employees within the Agency who have a need for the record in the performance of their duties; and

(2) Disclosures required under the FOIA.

§ 212.23 Appeals from denials of PA amendment requests.

(a) If the component's FOIA office denies a request for amendment of such records, the requester shall be informed of the reason for the denial and of the right to appeal the denial to the Appeals Review Panel. Any such appeal must be postmarked within 60 working days of the date of the component FOIA office's denial letter and sent to: Appeals Officer, Bureau for Management, Office of Management Services (for non OIG records), and Deputy Inspector General, Office of Inspector General (for OIG records) at the addresses given in § 212.11.

(b) Appellants should submit an administrative appeal of any denial, in whole or in part, of a request for access to the PA at the address in paragraph (a)

of this section. The component's FOIA office will assign a tracking number to the appeal.

(c) The Appeals Review Panel will decide appeals from denials of PA amendment requests within 30 business days, unless the Panel extends that period for good cause shown, from the date when it is received by the Panel.

(d) Appeals Review Panel decisions will be made in writing, and appellants will receive notification of the decision. A reversal will result in reprocessing of the request in accordance with that decision. An affirmation will include a brief statement of the reason for the affirmation and will inform the appellant that the decision of the Panel represents the final decision of the Agency and of the right to seek judicial review of the Panel's decision, when applicable.

(e) If the Panel's decision is that a record shall be amended in accordance with the appellant's request, the Chairman—USAID's FOIA Liaison Officer or their designee shall direct the office responsible for the record to amend the record, advise all previous recipients of the record of the amendment and its substance (if an accounting of previous disclosures has been made), and so advise the individual in writing.

(f) If the Panel's decision is that the amendment request is denied, in addition to the notification required by paragraph (d) of this section, the Chairman—USAID's FOIA Liaison Officer or their designee shall advise the appellant:

(1) Of the right to file a concise Statement of Disagreement stating the reasons for disagreement with the decision of the Agency;

(2) Of the procedures for filing the Statement of Disagreement;

(3) That any Statement of Disagreement that is filed will be made available to anyone to whom the record is subsequently disclosed, together with, at the discretion of the Agency, a brief statement by the component's FOIA office summarizing its reasons for refusing to amend the record;

(4) That prior recipients of the disputed record will be provided a copy of any statement of disagreement, to the extent that an accounting of disclosures was maintained.

(g) If the appellant files a Statement of Disagreement under paragraph (f) of this section, the component's FOIA office will clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently access the record. When the disputed record is subsequently disclosed, the component's FOIA office

will note the dispute and provide a copy of the Statement of Disagreement. The component's FOIA office may also include a brief summary of the reasons for not amending the record. Copies of the component FOIA office's statement shall be treated as part of the individual's record for granting access; however, it will not be subject to amendment by an individual under this part.

§ 212.24 Specific exemptions.

(a) Pursuant to 5 U.S.C. 552a(k), the Director or the Administrator may, where there is a compelling reason to do so, exempt a system of records, from any of the provisions of subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f) of the Act if a system of records is:

(1) Subject to the provisions of 5 U.S.C. 552(b)(1);

(2) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Act: Provided, however, that if any individual is denied any right, privilege, or benefit to which he or she would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056;

(4) Required by statute to be maintained and used solely as statistical records;

(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise

the objectivity or fairness of the testing or examination process; or

(7) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

(b) Each notice of a system of records that is the subject of an exemption under 5 U.S.C. 552a(k) will include a statement that the system has been exempted, the reasons therefore, and a reference to the **Federal Register**, volume and page, where the exemption rule can be found.

(c) The systems of records to be exempted under section (k) of the Act, the provisions of the Act from which they are being exempted, and the justification for the exemptions, are set forth in this paragraph (c):

(1) *Criminal Law Enforcement Records.* If the 5 U.S.C. 552a(j)(2) exemption claimed under paragraph (c) of (22 CFR 215.13) and on the notice of systems of records to be published in the **Federal Register** on this same date is held to be invalid, then this system is determined to be exempt, under 5 U.S.C. 552(a)(k)(1) and (2) of the Act, from the provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4); (G); (H); (I); and (f). The reasons for asserting the exemptions are to protect the materials required by executive order to be kept secret in the interest of the national defense or foreign policy, to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources and law enforcement personnel.

(2) *Personnel Security and Suitability Investigatory Records.* This system is exempt under U.S.C. 552a(k)(1), (k)(2), and (k)(5) from the provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4); (G); (H); (I); and (f). These exemptions are claimed to protect the materials required by executive order to be kept secret in the interest of national defense or foreign policy, to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law

enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering those sources and, ultimately, to facilitate proper selection or continuance of the best applicants or persons for a given position or contract. Special note is made of the limitation on the extent to which this exemption may be asserted.

(3) *Litigation Records.* This system is exempt under 5 U.S.C. 552(k)(1), (k)(2), and (k)(5) from the provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), (I); and (f). These exemptions are claimed to protect the materials required by executive order to be kept secret in the interest of national defense or foreign policy, to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information.

Dated: May 24, 2021.

Christopher A. Colbow,

Chief, Information and Records Division,
FOIA Public Liaison/Agency Records Officer,
U.S. Agency for International Development.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 17-97; FCC 21-62; FR ID 30569]

Call Authentication Trust Anchor

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on a proposal to shorten by one year the STIR/SHAKEN implementation extension for small voice service providers that originate an especially large number of calls, so that such providers must implement STIR/SHAKEN in the IP portions of their networks no later than June 30, 2022. The Commission believes this proposal will protect Americans from illegal robocalls—especially illegally spoofed robocalls—by ensuring that voice

service providers most likely to be the source of illegal robocalls authenticate calls sooner, allowing terminating voice service providers to know if the caller ID is legitimate and take action as appropriate, including by blocking or labeling suspicious calls. The Commission also seeks comment on how to define which small voice service providers should receive a shortened extension and on ways to monitor compliance.

DATES: Comments are due on or before July 9, 2021; reply Comments are due on or before August 9, 2021.

ADDRESSES: You may submit comments, identified by WC Docket No. 17-97, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing ECFS: <https://www.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act proposed information collection requirements contained herein should be submitted to the Federal Communications Commission via email to PRA@fcc.gov and to Nicole Ongele, FCC, via email to Nicole.Ongele@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Alexander Hobbs, Attorney Advisor,

Competition Policy Division, Wireline Competition Bureau, at Alexander.Hobbs@fcc.gov or at (202) 418-7433. For additional information concerning the Paperwork Reduction Act proposed information collection requirements contained in this document, send an email to PRA@fcc.gov or contact Nicole Ongele at (202) 418-2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Further Notice of Proposed Rulemaking (*Further Notice*) in WC Docket No. 17-97, FCC 21-62, adopted on May 20, 2021, and released on May 21, 2021. The full text of this document is available for public inspection at the following internet address: <https://docs.fcc.gov/public/attachments/FCC-21-62A1.pdf>. To request materials in accessible formats for people with disabilities (e.g. braille, large print, electronic files, audio format, etc.), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), or (202) 418-0432 (TTY).

Synopsis

I. Introduction

1. In this *Third Further Notice of Proposed Rulemaking*, we take further action to stem the tide of illegal robocalls by proposing to accelerate the date by which small voice providers that originate an especially large amount of call traffic must implement the STIR/SHAKEN caller ID authentication framework. STIR/SHAKEN combats illegally spoofed robocalls by allowing voice service providers to verify that the caller ID information transmitted with a particular call matches the caller's number. In March 2020, pursuant to Congressional direction in the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act, the Commission adopted timelines for voice service providers to implement STIR/SHAKEN. In September 2020, pursuant to the TRACED Act, the Commission provided a two-year extension of the deadline for all small voice service providers to implement STIR/SHAKEN. New evidence suggests, however, that a subset of small voice service providers appears to be originating a large and increasing quantity of illegal robocalls. To better protect Americans from illegally spoofed robocalls, we therefore propose to shorten that deadline from two years to one for the subset of small voice providers that are at a heightened risk of originating an especially large amount of robocall traffic.

II. Background

2. In March 2020, the Commission adopted rules requiring voice service providers to implement STIR/SHAKEN in the internet Protocol (IP) portions of their voice networks by June 30, 2021. The STIR/SHAKEN framework relies on public-key cryptography to securely transmit the information that the originating voice service provider knows about the identity of the caller and its relationship to the phone number it is using throughout the entire length of the call path, allowing the terminating voice service provider to verify the information on the other end. To implement STIR/SHAKEN in its network, a voice service provider must update portions of its network infrastructure to enable it to authenticate and verify caller ID information consistent with the framework.

3. Widespread implementation of STIR/SHAKEN will provide numerous benefits for voice service providers, their subscribers, and entities involved in enforcement. Because STIR/SHAKEN utilizes a three-level attestation to signify what a voice service provider knows about the calling party, it provides vital information that can be used by terminating voice service providers to block or label illegal robocalls before those calls reach their subscribers. Indeed, the Commission safe harbor for voice service providers that offer opt-out call blocking requires that providers base their blocking decisions on reasonable analytics that take into consideration caller ID authentication information. STIR/SHAKEN information also promotes enforcement by appending information about the source of a call into the metadata of the call itself, offering instantaneous traceback without the need to go through the traceback process. STIR/SHAKEN implementation further restores trust in caller ID information and makes call recipients more willing to answer the phone, reduces disruption to E911 networks, reduces providers' compliance response costs, and reduces the government-wide costs of enforcement. In total, the Commission estimated that the monetary benefit from reducing fraud and nuisance due to illegal robocalls would exceed \$13.5 billion per year.

4. The TRACED Act created a process by which the Commission could grant extensions of the June 30, 2021, implementation deadline for voice service providers that the Commission determined face "undue hardship" in implementing STIR/SHAKEN. After assessing the burdens and barriers faced

by different classes of voice service providers, the Commission granted the following class-based extensions: (1) A two-year extension to small voice service providers; (2) an extension to voice service providers that cannot obtain a "certificate" until such provider is able to obtain one; (3) a one-year extension to services scheduled for section 214 discontinuance; and (4) a continuing extension for the parts of a voice service provider's network that rely on technology that cannot initiate, maintain, and terminate SIP calls until a solution for such calls is readily available. Voice service providers seeking the benefit of one of these extensions must implement a robocall mitigation program and, under new rules adopted in the *Call Blocking Fourth Report and Order*, all voice service providers must comply with requirements to respond fully and in a timely manner to all traceback requests from certain entities, effectively mitigate illegal traffic when notified by the Commission, and adopt affirmative, effective measures to prevent new and renewing customers from using their network to originate illegal calls.

5. The Commission defined small voice service providers subject to an extension as those with 100,000 or fewer voice subscriber lines. It determined that an extension for small voice service providers until June 30, 2023, was appropriate because of their high implementation costs compared to their revenues, the limited STIR/SHAKEN vendor offerings available to them, the likelihood that costs will decline over time, and because an extension will allow small voice service providers to spread the costs over time. In adopting a blanket extension for small voice service providers, the Commission rejected arguments that not all voice service providers face identical hardships and that some of these providers may originate illegal robocalls. It determined that all small voice service providers, as a class, face undue hardship and thus a blanket extension for such providers is necessary to give them time to implement STIR/SHAKEN. The Commission also determined the extension would not unduly undermine the effectiveness of STIR/SHAKEN because small voice service providers must still implement robocall mitigation programs and small voice service providers serve only a small percentage of total voice subscribers, thus limiting potential consumer harm of an extension.

6. Following circulation of the *Second Caller ID Authentication Report and Order*, but before its adoption,

USTelecom proposed excluding from the definition of "small voice service provider" for purposes of this extension voice service providers that "originate a disproportionate amount of traffic relative to their subscriber base, namely providers that serve enterprises and other heavy callers through their IP networks." USTelecom noted that some of these voice service providers serve customers that "often are responsible for illegal robocalls." Specifically, USTelecom suggested we exclude those small voice service providers that either (1) receive more than half their revenue from customers purchasing services that are not mass-market services or (2) originate more than 500 calls per day for any single line in the normal course of business. USTelecom noted that "[g]iven the amount of traffic they originate, those providers should implement STIR/SHAKEN in a timely manner consistent with the goal of ubiquitous call authentication deployment" and that "providers serving these types of customers are unlikely to have the same resource constraints the Commission cited in adopting the extension." The Commission declined to adopt USTelecom's proposal at the time but left open the possibility that it might reevaluate it in the future. The Commission acknowledged that it saw "value in the policy goals that underlie USTelecom's request," but concluded that implementing the proposal would require a "difficult-line drawing exercise" and that it was not "able to identify criteria in the limited time available [before adoption] in which we have confidence." The Commission stated, however, that it was "open to revisiting this issue should we determine that the extension creates an unreasonable risk of unsigned calls from a specific subset of small voice service providers."

III. Further Notice of Proposed Rulemaking

7. With additional time to consider the issue and new evidence indicating that certain small voice service providers are originating a high and increasing share of illegal robocalls relative to their subscriber base, we now propose to reassess the Commission's earlier determination that all small voice service providers should receive a two-year extension. Specifically, we propose to shorten by one year the extension for small voice service providers that originate an especially large number of calls, so that such providers must implement STIR/SHAKEN in the IP portions of their networks no later than June 30, 2022.

We believe this proposal will protect Americans from illegal robocalls—and especially illegally spoofed robocalls—by ensuring that voice service providers most likely to be the source of illegal robocalls authenticate calls sooner, allowing terminating voice service providers to know if the caller ID is legitimate and take action as appropriate, including by blocking or labeling suspicious calls. We propose to take this action within the framework of the TRACED Act, which we interpret to require us to balance the hardship of compliance faced by voice service providers with the benefit to the public of implementing STIR/SHAKEN expeditiously. We also seek comment on how to define which small voice service providers should receive a shortened extension and on ways to monitor compliance.

A. Basis for Action

8. We propose concluding that a subset of small voice service providers is “often . . . responsible for illegal robocalls,” is originating an increasingly disproportionate amount of such calls compared to larger voice service providers, and should therefore be subject to a shortened extension.

9. A March 2021 report released by Transaction Network Services, a provider of call analytics, found that the problem of robocalls originated by certain smaller voice service providers has gotten worse: By the end of 2020, “[a]lmost 95% of high risk calls originate from non-Tier-1 telephone resources, up 3% from last year.” We seek comment on these data and our proposed conclusion that certain small voice service providers are a disproportionate source of these calls. Are commenters able to supply additional new data that address to this issue? Transaction Network Services previously stated in its 2020 comments that its data show, through the end of 2018, “87% of problematic calls originate . . . on non-Tier 1 networks” even though “the top 6 carriers represent almost 75% of . . . total calls.” We have now had additional time to evaluate this comment and other information discussed below that predates adoption of the *Second Caller ID Authentication Report and Order* compared to the very short time period between USTelecom filing its proposal and adoption of the *Second Caller ID Authentication Report and Order*. In our preliminary view, this information supports revisiting the scope of the small voice service provider extension. We seek comment on this view and on how we should now consider relevant evidence that predates adoption of the

Second Caller ID Authentication Report and Order.

10. With additional time to consider the issue, we now believe that evidence from Commission filings of providers subject to government-wide enforcement actions also supports a finding that a subset of small voice service providers are at heightened risk of originating a disproportionate number of illegal robocalls relative to their subscriber base. For example, in January 2020, the FTC sent letters to 19 providers regarding their possible involvement in “assisting and facilitating” unlawful robocalls. Data submitted to the Commission reflect that most of these providers appear to fall under the Commission definition of “small voice service provider.” Of the 19 providers that received letters, five submitted FCC Form 477, and of those five, only one had more than 100,000 access lines. Sixteen of the providers that received a January 2020 FTC letter also submitted an FCC Form 499. These forms, on average, showed end-user revenues of approximately \$3.4 million, indicating that most of these 16 providers had fewer than 100,000 lines. (A provider with \$3.4 million in revenue would be realizing just \$2.83 in revenue per month per subscriber if it had exactly 100,000 subscribers. Because we believe \$2.83 to be unrealistically low, we think it reasonable to infer that these providers, on average, have fewer than 100,000 subscribers and a higher revenue per subscriber.) This additional information supports our proposed conclusion that a subset of small voice service providers are at heightened risk of disproportionately originating robocalls. We seek comment on the data and assumptions underlying this conclusion. Specifically, we seek comment on whether we can rely on FCC Form 477 line count data to determine whether providers fall within our 100,000 line small voice service provider definition and whether it is reasonable to conclude that FCC Form 499 revenue data is predictive of provider line counts. Are there other data we should consider?

11. We also seek comment on whether the proportion of robocall traffic originated by small voice service providers has increased since the adoption of the *Second Caller ID Authentication Report and Order* and, if so, whether it is because larger voice service providers are implementing STIR/SHAKEN in anticipation of the June 30, 2021, deadline, leading callers originating unlawful robocalls to migrate to different networks. Several larger voice service providers have

recently submitted statements that they are in the process of implementing, or have already implemented, STIR/SHAKEN in the IP portions of their networks. Is the portion of robocall traffic attributable to small voice service providers likely to increase further as larger voice service providers complete STIR/SHAKEN implementation?

12. Consumer complaints received by the Commission make clear that unwanted robocalls remain a vexing problem. We invite commenters to provide other information about trends in illegal robocalls. We also seek comment on the effect that the Commission’s efforts have had on illegal robocalling in general and, specifically, on illegal robocalls originated by small voice service providers. The available evidence indicates that, at least in part due to the TRACED Act and Commission action, the percentage of STIR/SHAKEN-attested traffic has increased, with Transaction Network Services estimating that it had increased from 21 percent in January 2020 to 35 percent in December 2020. We seek comment on these data and trends in STIR/SHAKEN deployment, particularly among small voice service providers.

B. Proposed Curtailment of Extension for Small Voice Service Providers That Originate an Especially Large Amount of Traffic

13. In light of the foregoing data and additional time to consider USTelecom’s submission, we propose shortening the small voice service provider extension for small voice service providers that originate an especially large amount of calls. (As discussed below, we propose only to shorten the small voice service provider extension, and not the other extensions the Commission previously granted that could also apply to certain small voice service providers. *See infra* para. 19.) We seek comment on this proposal.

14. Although the Commission previously found that a two-year blanket extension for all small voice service providers was reasonable in part because they only serve a small percentage of subscribers, we propose revisiting this conclusion and determining that it is not a sufficient basis for continuing to provide a two-year extension for all such providers. We seek comment on this proposal. In particular, given the evidence indicating a subset of small voice service providers are at heightened risk of originating a significant percentage of illegal robocalls, in our preliminary view, a small quantity of subscribers should not alone be a sufficient basis for a two-year extension for all small voice service

providers. We seek comment on this view.

15. We specifically propose shortening the extension for small voice service providers that originate an especially large amount of traffic, and we seek comment on this proposal. We believe such providers are more likely to originate unlawful robocalls because, to originate large-scale robocall campaigns, it is necessary to originate a large number of calls. Further, we anticipate that rapid STIR/SHAKEN implementation by those small voice service providers that originate the most traffic is likely to be more beneficial than faster implementation by small voice service providers that originate fewer calls because providers that originate more traffic will authenticate more calls. In addition, in our preliminary view it is appropriate to tailor our alteration of the extension as narrowly as possible to those small voice service providers most likely to originate unlawful robocalls to avoid unnecessarily burdening small providers. We seek comment on this initial analysis. Are there additional reasons to curtail the extension specifically for small voice service providers that originate an especially large amount of traffic? Are there reasons that shortening the extension for this specific subset of small voice service providers would be especially harmful? Should we curtail the extension for different or additional subsets of small voice service providers?

16. To what degree would hastening STIR/SHAKEN implementation reduce unlawful robocalls, and how much would Americans benefit? When the Commission adopted the STIR/SHAKEN implementation mandate, it estimated the benefits would exceed \$13.5 billion per year and noted a host of specific benefits to consumers, providers, and the government. The data above indicate that much of this benefit will not be realized if the subset of small voice service providers that are most likely to originate robocalls does not implement STIR/SHAKEN. We believe that such a significant public benefit justifies shortening the extension for this subset of small voice service providers under the TRACED Act's balancing test. We seek comment on the size of the benefit that will result from shortening the extension for such providers and our conclusion that the benefit justifies a shortened extension pursuant to the TRACED Act. We note that several third-party robocall monitoring and protection services believe there will be a substantial benefit to accelerating small voice service providers' STIR/SHAKEN implementation. For example,

in its March 2021 report, Transaction Network Services argues that, given their disproportionate role originating robocalls, small voice service providers need to implement STIR/SHAKEN for the Commission's rules "to have a significant impact." Similarly, Robokiller, a spam call and protection service, concluded in a February 2021 report that because "smaller carriers have exemptions lasting . . . until 2023 . . . [w]ithout a unified front from all carriers, STIR/SHAKEN cannot be completely effective." We seek comment on these assertions.

17. We also seek comment on the burdens and barriers of implementing STIR/SHAKEN for the subset of small voice service providers for which we propose shortening the extension. Do these small voice service providers face less hardship to implement STIR/SHAKEN than other small voice service providers? Have implementation costs declined as more providers and vendors develop solutions to meet our June 30, 2021 deadline for larger voice service providers? Is accelerated implementation feasible? Are many small voice service providers already implementing STIR/SHAKEN even though the deadline is not until June 30, 2023? As of April 2021, 154 providers have obtained certificates from the Secure Telephone Identity Governance Authority (STI-GA), allowing them to participate in the exchange of authenticated traffic with other providers. Does this number of providers with certificates suggest that some small voice service providers have begun the process of STIR/SHAKEN implementation? From 2014–2018, providers that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines were obligated to file rural call completion reports, and 55 providers filed such reports in 2017, implying that approximately 100 providers with fewer than 100,000 lines have already obtained certificates from the STI-GA. To what extent did small voice service providers rely on a two-year extension in planning their network costs, and would shortening the extension unduly harm their reliance interests? Should we permit the full two year extension for any voice service provider in the subset who can document substantial reliance? What specific actions might qualify as reliance that should factor into our decision? We anticipate that reliance interests may be minimal because small voice service providers were put on notice that we might revisit USTelecom's proposal at a later time, and we seek comment on this opinion.

Do any identified burdens outweigh the benefits associated with requiring a subset of small voice service providers that is particularly likely to originate unlawful robocalls to implement STIR/SHAKEN more rapidly?

18. What costs would small voice service providers generally, and those specifically that originate an especially large amount of traffic, incur by accelerating their deployment to meet a deadline prior to June 30, 2023? USTelecom argues that small voice service providers that originate a "disproportionate" amount of traffic "are unlikely to have the same resource constraints the Commission cited" in adopting the two-year small voice service provider extension. We seek comment on this assertion. For example, do small voice service providers that originate an especially large amount of traffic have equipment that is generally newer and able to handle greater traffic volumes and, therefore, will likely require fewer resources to implement STIR/SHAKEN? Are their networks more streamlined and therefore do not require the time and effort to implement STIR/SHAKEN across multiple IP architectures? Would such providers spread their STIR/SHAKEN implementation costs over fewer pieces of equipment per dollar of revenue?

19. We propose curtailing only the small voice service provider extension for entities that originate a substantial amount of traffic and not shortening or eliminating any other extensions that the Commission adopted. We seek comment on this proposal. In our preliminary view, this approach is appropriate because it avoids imposing burdens on this subset of small voice service providers greater than the burdens we impose on the largest voice service providers. The TRACED Act directs that we "shall grant" an extension to a voice service provider that materially relies on a non-IP network and the extension must extend "until a call authentication protocol has been developed for calls delivered over non-internet protocol networks and is reasonably available." Because we have not yet made such a finding, we cannot curtail the non-IP network extension.

C. Defining Small Voice Service Providers That are Most Likely To Be the Source of Unlawful Robocalls

20. We seek comment on how to define small voice service providers that originate an especially large amount of calls and thus are at heightened risk of being a source of unlawful robocalls. In considering possible definitions, we seek to identify one or more definitional prongs that most accurately identify, in

an administrable manner, those small voice service providers most likely to originate a significant quantity of unlawful robocalls. For each possible definitional criterion for which we seek comment below, we seek comment on whether it should be the sole definition or whether it should be one of multiple prongs of a definition. If we employ multiple prongs in our definition, we seek comment on whether a small voice service provider that meets any of multiple prongs should be excluded from the full extension (*i.e.*, we would use “or” between multiple prongs), or whether only a small voice service provider that meets all of the prongs should be excluded from the full extension (*i.e.*, we would use “and” between multiple prongs).

21. *Originates a Significant Number of Calls Per Day for Any Single Line on Average.* We seek comment on whether we should exclude from the full extension a small voice service provider that originates an unusually high number of calls per day on a single line. For example, USTelecom proposes that we exclude from the full extension a small voice service provider that originates more than 500 calls per day for any single line in the normal course of business. We seek comment on this suggestion and potential alternatives. Is a high volume of traffic originating from a single line evidence of a heightened risk that a provider is likely to be originating a high volume of unlawful robocalls? Do small voice service providers’ customers often originate lawful calls at such a high volume from a single line?

22. If we were to set a numerical threshold, we seek comment on whether the appropriate numerical call threshold is 500 calls per day or another numerical threshold. USTelecom argues that its 500 call threshold is meant to distinguish between “the number of calls that a particularly prolific subscriber could make in a given day and more automated technology” indicative of illegal robocalling. Does a 500 call per day threshold accurately capture this dividing line? Would an alternative call threshold better identify those voice service providers most likely to be the source of unlawful robocalls? For example, would a 1,000 calls-per-day threshold ensure that small voice service providers unlikely to be the source of unlawful robocalls would continue to benefit from a two-year extension? Would a lower threshold of, for example, 250 calls ensure that we capture all small voice service providers that are likely to originate a significant number of illegal robocalls?

23. We propose that if we adopt a definition based on calls per day for a single line, we would employ the term “on average” rather than “in the normal course of business” because we preliminarily believe the former is more precise. We seek comment on this view and on the meaning of “in the normal course of business.” We seek comment on how we should measure the calls per day on average. Over what period would we require small voice service providers to calculate the average? Should the average be based on sporadic samples or a single continuous period? Should we exclude certain time periods, such as weekends or holidays? Instead of average calls per day, should we examine the median number of calls each day over a particular period? What are the advantages and disadvantages of each approach?

24. Instead of examining the average number of calls over time, should we look at small voice service providers that reach a call threshold on a single line on a single day? Would this approach provide additional certainty and reduce the possibility for gaming? Rather than looking at the average number of calls on a single line, should we look at an average—or other measures—across a larger number of lines? If so, what call volume metric should we use and why? For example, could we look at the number of calls per line averaged over all lines or those lines with more originating than terminating calls? Would an approach that focuses on the number of calls averaged over multiple lines be less likely to be subject to manipulation than a test that looks at the total number of calls over a single line? We also seek comment on whether any threshold we adopt for a shortened extension that relies on “lines” or “subscriber lines” needs to take into account the current real-world understanding of those terms for voice service providers, particularly VoIP providers not serving end-users over their own or leased last-mile facilities. Do these providers’ understanding of “lines” differ from how we have traditionally measured “lines” and “voice subscriber lines?” If so, how should this understanding affect any calls-per-line threshold we adopt?

25. If we adopt a numerical threshold of calls, we seek comment on whether we should exclude calls from certain entities that have a valid business reason to make a large number of calls, so that certain calls would not count toward any numerical threshold we establish. For example, should we exempt calls from doctor’s offices, schools, or businesses such as insurance

companies? Would a small voice service provider be able to determine whether its customer fell within any of the categories we adopt? We also seek comment on whether we should exempt from the threshold calls that fall under an exemption pursuant to the Telephone Consumer Protection Act of 1991 (TCPA). We seek comment on whether calls that meet some or all of the TCPA exemptions should not count against any numerical call threshold we adopt. Are the interests served by the TCPA exemptions the same as or similar to the interests served by exempting such calls from the call threshold?

26. *Receives More than Half Its Revenues from Customers Purchasing Non-Mass Market Services.* We seek comment on whether we should shorten the extension for small voice service providers that receive more than half their revenue from customers purchasing services that are not mass-market services, as suggested by USTelecom. Do commenters agree that the proportion of revenue from non-mass market services is a good proxy for identifying small voice service providers that are likely to originate an especially large amount of traffic and, therefore, likely to originate unlawful robocalls? USTelecom argues that its proposal was “intended to be narrow and capture those providers who target enterprise and other non-consumer customers as a key part of their business.” This approach assumes that small voice service providers that mostly sell specialized services, and especially business services, are more likely to originate an especially large amount of traffic and thus are at greater risk of originating a high volume of unlawful robocalls. Do commenters agree with this assumption?

27. We seek comment on how to measure revenue. Should we measure only revenue attributable to voice service, revenue from all telecommunications and information services, including wholesale services, or some other combination? If only revenue attributable to voice service, should we measure certain sub-categories of voice service such as interstate, international, or toll? Are robocalls likely to originate out of state and, if so, should we exclude intrastate revenue if such revenue is unlikely to be associated with illegal robocalling?

28. We seek comment on whether half of revenue is an appropriate dividing line. For example, should we adopt a 75 percent non-mass market revenue threshold? Would such a threshold better balance the interest in shortening the extension for those voice service providers most likely to initiate

unlawful robocalls with the harm of shortening the extension for those providers least likely to do so? Would a lower enterprise revenue threshold such as 25 percent ensure we capture all small voice service providers likely to originate a large number of illegal robocalls while placing a limited burden on other small voice service providers?

29. In determining a voice service provider's share of non-mass market revenue, we seek comment on whether it would be more appropriate to measure revenue from non-mass market customers, non-mass market services, or a combination of the two. For example, should we only measure revenue from non-mass market services attributable to non-mass-market customers or attributable to all customers? The *Second Caller ID Authentication Report and Order* barred voice service providers from imposing line item charges for STIR/SHAKEN implementation on "consumer subscribers" (defined as "residential mass-market subscribers") and "small business customer subscribers." In doing so, it defined mass market services as "services marketed and sold on a standardized basis to residential customers, small businesses and other end-user customers." Should we adopt these definitions to measure mass market revenue so that if a small voice service provider's mass-market revenue was less than 50 percent of total revenue, it would meet our proposed revenue criterion? Should we instead adopt a slightly different definition of mass-market customer or service from proceedings where we examined voice product markets? Would another definition be appropriate?

30. *Other Alternative or Additional Criteria.* We also seek comment on adopting criteria other than, or in addition to, calls per line and/or revenue to determine when a small voice service provider is particularly likely to be the source of unlawful robocalls. Should we shorten the extension for those small voice service providers that offer certain service features to customers commonly used for unlawful robocalls, such as the ability to display any number in the called party's caller ID, or to upload and broadcast a prerecorded message? Should we shorten the extension for small voice service providers that offer specific implementations of customized caller ID display, such as area code or neighborhood spoofing (*i.e.*, spoofing the area code or NXX of the called party)? Should we curtail the extension for those small voice service providers that offer customers autodialing functionality or whose call durations are

very short? If so, what should that duration be? (For example, ZipDX argues that if originating call duration is less than 120 seconds on average, 15 percent of calls are less than 30 seconds and 50 percent of calls are less than 60 seconds, it is likely that such traffic is coming from an autodialer, and asserts that "[t]he legitimate situations where auto-dialed calls would come from foreign sources using USA telephone numbers" are limited.)

31. Is the relative proportion of originating to terminating traffic, and not just the absolute level of originating traffic, relevant to whether a voice service provider is likely to be originating unlawful robocalls? If so, should we shorten the extension for small voice service providers that have a certain ratio of originating to terminating traffic? If so, what should that ratio be?

32. Are "all-IP" small voice service providers more likely to be the source of unwanted robocalls? If so, should we curtail the extension for all-IP small voice service providers, particularly if their STIR/SHAKEN implementation costs are lower? How would we define "all-IP" under this approach? How should we prevent voice service providers from gaming such a definition by retaining a small TDM network or a TDM network element?

33. Should we shorten the extension for possible or actual violations of our rules or the law? How would we implement such a standard during the pendency of the extension period? Should we curtail the extension for any small voice service providers on the red-light list, which lists entities that are delinquent in debts owed to the Commission? Should we curtail the extension for small voice service providers subject to a federal agency action or letter related to the origination or transmission of unlawful calls? For example, should we authorize the Enforcement Bureau to curtail the extension for small voice service providers it notifies of illegal traffic under our rules? The two-year extension relates to the duties of voice service providers as the originators of traffic, but a number of providers have been subject to inquiries and enforcement actions in their role as gateway or intermediate providers. We seek comment on whether these kinds of inquiries and enforcement actions should bear on a small voice service provider's extension length, and whether that should extend to enforcement associated with traffic the provider merely transmitted and did not originate. Should we shorten the extension for those small voice service

providers that the Commission, in consultation with the Industry Traceback Group, has determined are "uncooperative" or subject to a certain threshold number of traceback requests? How would we implement such an approach? For example, should the Industry Traceback Group provide the Commission with a list of providers that meet this criterion by a date certain?

34. Are voice service providers with a higher revenue per customer more likely to be the source of unlawful robocalls? If so, should we adopt a definition, or a prong of a definition, based on revenue per customer? If so, what should the threshold be? Should we examine small voice service providers with relatively high percentages of revenue in certain categories on their FCC Form 499 or similar submissions to the Commission? Are high levels of interstate, international, or toll revenue compared to total revenues indicative of small voice service providers likely to be the source of unlawful robocalls?

35. Should a certain class or classes of voice service providers that are unlikely to originate robocalls retain the two-year extension while we eliminate the extension for all other classes? For example, should only small voice service providers that are also rural local exchange carriers retain a two year extension on the basis that such providers are "generally not involved in illegal robocalling?" Should only those rural local exchange carriers that do not offer services typically used by illegal robocallers retain a two-year extension? Are there other classes of providers that are unlikely to originate illegal robocalls and should therefore retain a two-year extension? For example, are providers that offer voice service over physical lines to end-user customers less likely to engage in illegal robocalling and if so, should they retain the two-year extension?

36. We seek comment generally on whether small voice service providers track the information for the definitional criteria that we may adopt. For example, do voice service providers retain and track revenue and calls-per-line data? Can the Commission rely on data voice service providers track and submit for other purposes? Could we rely on revenue data from FCC Form 499 and line count information from FCC Form 477 to measure revenue or line-count-related criteria by market segment? If voice service providers do not track data necessary to determine whether they fall within the criteria we adopt, would it be overly burdensome for them to begin to track this data solely for the purpose of

determining whether they qualify for a one or two-year extension?

37. *Examination Period.* We propose that any criteria we adopt would apply to small voice service provider operations prior to the effective date of our Order released pursuant to this Further Notice. For example, if we adopted a criterion based on the number of calls per line, the relevant time period to determine if the call threshold is met would be the number of calls per line during a period prior to the effective date of such Order. We seek comment on this general approach and what the relevant period should be. For example, should we look at voice service provider operations in the 120 days prior to the date the Order is adopted? Would such an approach give small voice service providers sufficient time to gather the necessary information and ensure that a sufficiently representative sample of these providers' operations are examined? Would another time period be more appropriate? Would tying the relevant time period to the effective date of a later Order permit small voice service providers to game the rule by modifying their behavior after release of this Further Notice? Would such gaming be undesirable if it had the effect that a voice service provider ceased meeting criteria showing it was likely to be the source of illegal robocalls?

38. In addition, we propose that small voice service providers that did not meet the criteria during the examination period would not be subject to a shortened extension if they meet the criteria at a later date. We propose this approach given the limited time between any Order we release subsequent to this Further Notice and the June 30, 2023, end date of the original two-year extension. We seek comment on this proposal.

D. Length of Time: One-Year Reduction

39. We propose to shorten the extension for those small voice service providers that originate an especially large amount of traffic from two years to one year, with a new compliance deadline of June 30, 2022. We seek comment on this proposal. We seek specific comment on whether a one-year extension is a "reasonable period of time" for this subset of small voice service providers to implement STIR/SHAKEN given the "burdens and barriers to implementation" that they face and the likelihood they are the source of illegal robocalls. We anticipate that a one-year extension balances the public interest in reducing unlawful calls while allowing affected providers sufficient time to implement STIR/

SHAKEN. For example, we note above that affected providers may have a lower burden to implement STIR/SHAKEN than other small voice service providers. If so, do such providers face less hardship than other small voice service providers? Even if they do not have a lower burden, do the significant benefits of requiring those small voice service providers most likely to be responsible for illegal robocalls to comply with STIR/SHAKEN mean that a one-year extension for those providers is nevertheless a "reasonable period of time"?

40. Should we reduce the extension by more or less than our proposal? Would a shorter reduction in the extension (e.g., January 1, 2023) still provide a material benefit in the form of reduced illegal robocalls compared to the current two-year extension? Would a greater reduction in the extension (e.g., a compliance deadline of January 1, 2022) be practical, given the timing of any subsequent Order? Would it unduly impact affected providers' reliance interests? Does the fact that affected providers could seek a waiver if they meet the Commission's waiver standard ameliorate any identified concerns about whatever implementation deadline we adopt? (The Commission may exercise its discretion to waive a rule where the particular facts at issue make strict compliance inconsistent with the public interest. In considering whether to grant a waiver, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.) Should we direct the Wireline Competition Bureau to rule on any waiver request within 90 days of submission to address these concerns and any potential reliance interests?

41. We also seek comment on alternative approaches to altering the extension period. For example, instead of measuring the reduction against the June 30, 2021, compliance deadline, should we set the new compliance deadline to a certain interval following the effective date of any Order released pursuant to this Further Notice? Under this approach, affected small voice service providers would be required to implement STIR/SHAKEN in the IP portions of their networks a certain number of days following the Order's effective date. If we adopt this approach, what should the appropriate interval be? Are there other approaches we should consider? For example, should we set the end of the extension for affected providers to the later of (1) a specific date (e.g., June 30, 2022) or (2) a certain number of days following the effective

date of the Order released pursuant to this Further Notice? In order to have the maximum effect on illegal robocalls, should we terminate the extension upon the effective date of any Order we adopt? Would such an aggressive timeline be impractical or overly burdensome? How relevant is the timing of the Order to the approach we choose?

E. Ensuring Compliance

42. We seek comment on how to monitor and evaluate compliance by the small voice service providers that are subject to the proposed curtailed extension. In particular, we seek comment on small voice service providers' duty to notify the Commission of their updated extension status and whether they should submit data demonstrating that status.

43. *Notification of Extension Status.* First, we propose relying on the current rule requiring voice service providers to update the Commission on the term and type of their extension and when they have implemented STIR/SHAKEN. (By June 30, 2021, voice service providers that have not implemented STIR/SHAKEN must certify whether they are subject to an extension and state the "type" of extension (e.g., small voice service provider extension). Voice service providers must also update their certifications and filings in the FCC's Robocall Mitigation Database portal within ten business days of any change, including whether an extension no longer applies.) This rule, by its terms, would require small voice service providers subject to any shortened extension we adopt to: (1) Within ten business days of the effective date of any Order we adopt, update their certifications and associated filings indicating that they are subject to a shortened extension; and (2) further update their certifications and associated filings within ten business days of completion of STIR/SHAKEN implementation in the IP portions of their networks. Those small voice service providers not subject to a shortened extension would not have to update their certifications and associated filings. We seek comment on this proposal and whether any clarifications to our rules are necessary. We also seek comment on whether and how we should modify the existing rule. For example, should we provide more than ten days following the effective date of any Order we adopt for small voice service providers subject to a shortened extension to update their certifications? Should we adopt a mechanism to notify the public of the results of the certification process? If so, what should that mechanism be? Are

there any steps that we should take to reduce the reporting burden for small voice service providers?

44. *Additional Data.* We seek comment on whether we should require some or all small voice service providers to submit data demonstrating whether they meet the criteria we adopt. For example, should we require voice service providers to submit data on the average number of calls per day or non-mass market revenue if we adopt one or both of these criteria? If we adopt qualitative criteria such as curtailing the extension for those voice service providers that offer customers the ability to modify the outgoing caller ID information, what sort of information should we require voice service providers to submit? We seek comment generally on the benefits and burdens of data submission. We are cognizant of the importance of minimizing burdens on small voice service providers where possible. Should we therefore avoid requiring voice service providers to submit data by relying on data already in our possession to monitor compliance? For example, should we rely on existing line and revenue data, e.g., from FCC Forms 477 and 499 for those providers? If we rely on already submitted data, should we publicly release a list of small voice service providers that we believe are subject to a shortened extension, and provide an opportunity for such parties to file objections? If we rely on already submitted data for at least some voice service providers, should these providers not be required to submit the certification updates described above?

F. Legal Authority

45. We believe the Commission has authority for curtailing the extension for a subset of small voice service providers under section 4(b)(5)(A)(ii) of the TRACED Act. That section gives us authority to grant extensions of the caller ID authentication implementation deadline “for a reasonable period of time” upon a finding of undue hardship. Under that section, we granted the current two-year small voice service provider extension that we now propose to modify. We believe that, in considering whether a hardship is “undue” under the TRACED Act, as well as whether an extension is for a “reasonable period of time,” it is appropriate to balance the hardship of compliance due to the “the burdens and barriers to implementation” faced by a voice service provider or class of voice service providers with the benefit to the public of implementing STIR/SHAKEN expeditiously; and that, consequently, we have the authority to grant a shorter

extension for voice service providers that present a higher risk of originating illegal robocalls or that may also face a lesser hardship than other small voice service providers. We seek comment on this interpretation as well as any alternatives.

46. Finally, we acknowledge that the Commission has a duty under the Administrative Procedures Act (APA) when it changes direction, as we propose to do here, to explain the reasons for that change. Specifically, while we do not need to demonstrate why the reasons for a shortened extension for a subset of small voice service providers are “better than the reasons” for a two year extension for all small voice service providers, we must show that there are “good reasons” for our change, and that the change is permissible under the relevant statute; in this case, the TRACED Act. As explained above, we propose to rely both on information that postdates the *Second Caller ID Authentication Report and Order* and on our reevaluation of preexisting information that the Commission had very limited time to consider in the short period between USTelecom’s proposal and adoption of the *Second Caller ID Authentication Report and Order*. The evidence thus far indicates that a subset of small voice service providers is originating a large and increasing quantity of illegal robocalls; and in our preliminary view a shortened extension for a subset of such providers is justified under our proposed interpretation of the TRACED Act. We seek comment on this analysis given the evidence already in the record and in light of any additional evidence that parties may file.

IV. Procedural Matters

47. *Initial Regulatory Flexibility Analysis.* As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in the *Third Further Notice of Proposed Rulemaking (Further Notice)*. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *Further Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Call Authentication Further Notice of Proposed Rulemaking to the IRFA, to

the Chief Counsel for Advocacy of the SBA.

48. *Paperwork Reduction Act.* The *Further Notice* contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

49. *Ex Parte Presentations—Permit-But-Disclose.* The proceeding this *Further Notice* initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission’s rules. In proceedings governed by § 1.49(f) of the Commission’s rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system

available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Appendix A

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Third Further Notice of Proposed Rulemaking (Further Notice)*. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *Further Notice*. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

2. In order to continue the Commission's work combating illegal robocalls, the *Third Further Notice of Proposed Rulemaking (Further Notice)* proposes to accelerate the date by which small voice service providers that originate an especially large amount of call traffic, and thus are at particular risk of originating unlawful robocalls, must implement STIR/SHAKEN. The *Further Notice* proposes finding that shortening the extension is necessary because a subset of small voice service providers originate a disproportionate amount of robocalls and seeks comment on how to define this scope of entities. The *Further Notice* proposes shortening the STIR/SHAKEN implementation extension from two years to one year for such entities. The *Further Notice* seeks comment on these proposals, and whether we should modify existing rules or adopt new rules to monitor compliance.

B. Legal Basis

3. The *Further Notice* proposes to find authority for the proposed rules under section 4(b)(5)(A)(ii) of the TRACED Act. Section 4(b)(5)(A)(ii) gives us authority to grant extensions of the caller ID authentication implementation deadline "for a reasonable period of time" upon a finding of undue

hardship. Under that section, we granted the small provider extension we now propose to curtail, but did not explicitly interpret the meaning of the term "reasonable" in the context of that extension. The *Further Notice* proposes concluding that, under the TRACED Act, "reasonable" means that in determining the length of any extension, we must balance the hardship faced by a provider or class of providers with the benefit of implementing STIR/SHAKEN expeditiously; and that, consequently, we have the authority to grant a shorter extension for providers that we believe present a higher risk of originating illegal robocalls, and seeks comment on this interpretation.

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

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

1. Wireline Carriers

5. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as "establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry." The SBA has developed a small

business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

6. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated for the entire year. Of that total, 3,083 operated with fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

7. *Incumbent LECs*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

8. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers and under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms

operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on these data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

9. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small-business size standard (e.g., a telephone communications business having 1,500 or fewer employees) and “is not dominant in its field of operation.” The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

10. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have

1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

11. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.” As of 2018, there were approximately 50,504,624 cable video subscribers in the United States. Accordingly, an operator serving fewer than 505,046 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Therefore we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

2. Wireless Carriers

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

13. The Commission’s own data—available in its Universal Licensing System—indicate that, as of August 31, 2018 there are 265 Cellular licensees that will be affected by our actions. The

Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

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

3. Resellers

15. *Local Resellers*. The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA’s size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data from 2012 show that 1,341 firms provided resale services during that year. Of that number, all

operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities.

16. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 2012 Census Bureau data show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

17. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business definition specifically for prepaid calling card providers. The most appropriate NAICS code-based category for defining prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell

telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual networks operators (MVNOs) are included in this industry. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. All 193 carriers have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by these rules.

4. Other Entities

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

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

19. The *Further Notice* proposes shortening the extension for small voice service providers that originate an

especially large amount of traffic from two years to one year, which would result in a new compliance deadline for small providers to implement STIR/SHAKEN by June 1, 2022. The *Further Notice* also proposes to rely on the Commission’s existing rule that would require small voice service providers subject to a shortened extension to (1) within ten business days of the effective date of any Order we adopt, update their certifications and associated filings indicating that they are subject to a shortened extension; and (2) further update their certifications and associated filings within ten business days of completion of STIR/SHAKEN implementation in the IP portions of their networks. We seek comment on these proposals and whether we should adopt alternate requirements to monitor compliance.

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

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

21. We seek comment on our proposal in the *Further Notice* to shorten the extension for small voice service providers that originate an especially large amount of call traffic and whether our proposed rules would impact such voice service providers; and on proposals to lessen that impact, including by modifying the terms of this curtailed compliance. The *Further Notice* further seeks comment on ways to ease compliance with monitoring requirements, including by relying on existing rules and data collection requirements. We expect to take into account the economic impact on small entities, as identified in comments filed in response to the *Further Notice* and this IRFA, in reaching our final conclusions and promulgating rules in this proceeding.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

22. None.

V. Ordering Clauses

23. Accordingly, *it is ordered*, pursuant to sections 4(i), 4(j), and 227b of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 227b, that this *Third Further Notice of Proposed Rulemaking is adopted*.

24. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Third Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis (IRFA), to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2021-12007 Filed 6-8-21; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 210603-0120]

RIN 0648-BK29

Pacific Island Fisheries; Electronic Logbooks for Hawaii and American Samoa Pelagic Longline Fisheries

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to require the use of electronic logbooks in Hawaii pelagic longline fisheries and on Class C and D vessels in the American Samoa pelagic longline fishery. This proposed rule is intended to reduce human error, improve data accuracy, save time for fishermen and NMFS, and provide more rigorous monitoring and forecasting of catch limits.

DATES: NMFS must receive comments by July 9, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2021-0014, by either of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to [http://](http://www.regulations.gov)

www.regulations.gov and enter NOAA-NMFS-2021-0014 in the Search box, click the "Comment" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The Western Pacific Fishery Management Council (Council) prepared a regulatory amendment that provides additional information and analyses that support this proposed rule. Copies are available from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, or www.wpcouncil.org.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Michael D. Tosatto (see **ADDRESSES**) and to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Lynn Rassel, NMFS Pacific Islands Regional Office Sustainable Fisheries, 808-725-5184.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Hawaii (shallow-set and deep-set) and American Samoa longline fisheries under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). The implementing Federal regulations for these fisheries include a suite of conservation and management requirements. Among the requirements are limited access permits, carrying at-sea observers, vessel monitoring system (VMS), daily catch and effort reporting, and a host of other gear and operational requirements.

Current regulations require vessel operators to record and submit catch information in paper logbooks, with the option to use electronic logbooks. Currently, if using paper logbooks, NMFS requires vessel operators to record catch information daily and submit the logbooks within 72 hours of returning to port after a fishing trip. If using electronic logbooks, NMFS requires vessel operators to record catch information daily and submit electronic logs within 24 hours after the end of a fishing day. In the event of a system failure, vessel operators are required to submit electronic or paper logbooks within 72 hours of returning to port after a fishing trip.

There are approximately 144 active vessels in the Hawaii longline fisheries (shallow-set and deep-set combined) and approximately 12 active Class C and D vessels in the American Samoa longline fishery. As of March 2021, approximately 94 vessels in the Hawaii fisheries are voluntarily using electronic logbooks. No vessels are using electronic logbooks in the American Samoa fishery.

Paper logbooks require manual handling and data entry. Collecting, collating, storing, and entering data manually is costly, inefficient, and prone to errors. Additionally, NMFS and the Council manage U.S. longline bigeye tuna catch limits and allocation limits, which require forecasts of bigeye tuna catches throughout the fishing season to inform in-season management. Errors in recording and delay in data entry can result in near-term forecasting inaccuracy, potentially resulting in overages and underages of bigeye tuna catch with respect to the Western and Central Pacific Fisheries Commission (WCPFC) catch limits. Any overage in the WCPFC Convention Area would be applied to the catch limit in the subsequent year, thereby reducing the catch limit for the following year. Conversely, if forecasting inaccuracy leads to an underage, the fishery would not be allowed to carry-over the unused catch limit to the subsequent year, resulting in a reduction in catch available to the fishery and the Nation.

In light of these inefficiencies, the Council in October 2018 recommended that NMFS implement mandatory electronic logbooks in the Hawaii pelagic longline fisheries. In June 2019, the Council requested that the NMFS Pacific Islands Fisheries Science Center convene an Electronic Technologies Steering Committee to address electronic logbook implementation challenges. In June 2020, the Council considered requiring electronic logbooks in the Hawaii and American

Samoa pelagic longline fisheries. In September 2020, the Council recommended that NMFS require electronic logbooks for the Hawaii pelagic longline fisheries and for Class C and D vessels in the American Samoa pelagic longline fishery, implementation targeted for July 2021.

Pursuant to the Council's recommendation, NMFS proposes to require the use of electronic logbooks for vessels with Federal permits for the Hawaii fishery, and Class C and D Federal permits for the American Samoa fishery. This proposed rule would continue to meet existing reporting and recordkeeping requirements set forth in 50 CFR 665.14.

Under the proposed action, vessel operators would be required to use a NMFS-certified electronic logbook (consisting of a tablet computer and software application) to record catch, effort, location, and other information, and submit it within 24 hours of the completion of a fishing day. In the event of technology malfunction with hardware, software, or transmission, NMFS would require that logbook data be submitted on paper or electronically within 72 hours of the end of the affected fishing trip.

If this rule is finalized, it would be effective no earlier than 30 days after the date of publication in the **Federal Register**. After the effective date, the requirements would be applicable to an individual permit holder after NMFS notifies the permit holder of the requirement to submit records electronically and after NMFS assigns an electronic logbook to the vessel.

NMFS would be responsible for purchasing, providing, and maintaining the tablets, software, and data transmission at no cost to fishery participants. In addition to providing the electronic logbooks, NMFS would provide vessel operators with individual user accounts and train them to use the system properly.

If a third party were to develop an electronic logbook system in the future, NMFS would work with prospective provider(s) and fishery participants to review and evaluate those systems and, if appropriate, certify them for use in the fisheries. NMFS has not determined at this time whether it would provide alternative third-party systems to the fisheries at no cost, or if the fishery participants would be required to assume those costs.

Near real-time reporting via electronic logbooks would improve timeliness in catch reporting and add precision and reduce catch forecast inaccuracies. This proposed action would ensure that Hawaii and American Samoa longline

fishermen have the opportunity to maximize sustainable catch of bigeye tuna and species, facilitate the implementation of in-season accountability measures, and meet market demands, consistent with the conservation needs of the stocks. This proposed action would also support the NMFS Policy Directive on Electronic Technologies (ET) and Fishery Dependent Data Collection (Electronic Technology Policy Directive 04-115; May 7, 2019) to complement and/or improve existing fishery-dependent data collection programs to achieve the most cost-effective and sustainable approach that ensures alignment of management goals, data needs, funding sources and regulations.

NMFS will consider public comments on this proposed rule and will announce the final rule in the **Federal Register**. NMFS must receive comments on this proposed action by the date provided in the **DATES** heading. NMFS may not consider comments postmarked or otherwise transmitted after that date. Regardless of the final rule, all other existing management measures would continue to apply in the longline fishery.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation for the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed action would apply to pelagic longline fishing vessels holding Hawaii longline permits and American Samoa Class C and D longline permits under the FEP. Vessel operators would be required to record fishing data using electronic, and to submit electronic reports within 24 hours after completion of each fishing day via the NMFS-provided VMS. NMFS would provide the electronic logbooks and training. In the case of a hardware, software, or transmission failure, NMFS would allow submission of electronic or paper

report forms within 72 hours of the end of each fishing trip. Implementing electronic logbooks would take advantage of emerging technology that could reduce human error, improve data accuracy, save time for fishermen and NMFS, and provide more rigorous monitoring and forecasting of catch limits and application of in-season accountability measures. This action is needed to ensure that the Hawaii and American Samoa longline vessels have the opportunity to maximize sustainable catch of bigeye tuna and other Western Pacific pelagic management unit species under the FEP to meet market demands consistent with the conservation needs of the stocks.

Because NMFS is paying the costs of the hardware, software, data transmission, and training under the existing voluntary, and proposed mandatory, electronic reporting system, there will be minimal burdens on the fishery participants. There may be a brief training and learning period for operators to become familiar with recording and submitting electronic reports. There would be no new reporting elements for fishery participants. Only the method of reporting would change for some operators who are not already using the electronic system.

In 2019, Hawaii longline vessels landed approximately 32.8 million lb (14,874 t) of pelagic fish valued at \$94.8 million. With 146 vessels making either a deep- or shallow-set trip in 2019, the ex-vessel value of pelagic fish caught by Hawaii-based longline fisheries averaged almost \$649,000 per vessel. In 2019, American Samoa-based longline vessels landed approximately 2.9 million lb (1,315 t) of pelagic fish valued at \$3.9 million; albacore made up the largest proportion of pelagic longline commercial landings. With 17 active longline vessels in 2019, the ex-vessel value of pelagic fish caught by the American Samoa fishery averaged almost \$230,000 per vessel.

Complete data are not yet available for 2020, but preliminary information indicates that the longline fisheries experienced a temporary decrease in revenue and other fishery performance measures, possibly resulting from travel restrictions. In Hawaii, declines in tourism led to a reduction in demand for associated goods and services including locally caught seafood. These, in turn, affected fishery landings, fish prices, and revenues. Average revenues, landings, and prices from March through July dropped 45 percent, 34 percent, and 15 percent, respectively, compared to averages for 2015–2019 (NMFS Pacific Islands Fisheries Science

Center, unpublished data). In American Samoa, 2020 longline fishing activity was also likely to have been similarly adversely affected, compounded by the imposition of incoming travel restrictions, which affected the recruitment of fishing crew. However, travel and other restrictions are likely to ease, which would help boost market demand for locally caught seafood, market prices, and fishing effort.

NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. Based on available information, NMFS has determined that all vessels permitted federally under the FEP are small entities, *i.e.*, they are engaged in the business of fish harvesting (NAICS 11411), are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of \$11 million. Even though this proposed action would apply to a substantial number of vessels, the implementation of this action would not result in significant adverse economic impact to individual vessels.

Under this proposed rule, the Hawaii and American Samoa longline fisheries are not expected to expand substantially or change their operations (*i.e.*, area fished, number of vessels and trips, number and depth of hooks, or deployment techniques). The proposed rule does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small organizations or government jurisdictions. Furthermore, there would be little, if any, disproportionate adverse economic impacts from the proposed action based on gear type, or relative vessel size. The proposed action also will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities.

For the reasons above, NMFS does not expect the proposed action to have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This rule revises the existing requirements for the collection of information under Office of Management and Budget (OMB) Control Number 0648–0214 Pacific Islands Logbook Family of Forms by requiring the use of electronic logbooks in Hawaii pelagic longline fisheries and on Class C and D vessels in the American Samoa pelagic longline fishery. This revision is not expected to affect the number of respondents or anticipated responses and is expected to reduce the number of burden hours and burden cost to fishermen. Public reporting burden for completing an electronic logbook form for a completed fishing day is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information at www.reginfo.gov/public/do/PRAMain.

Notwithstanding any other provisions of the law, no person is required to respond or, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR 665

Administrative practice and procedure, Hawaii, American Samoa, Fisheries, Fishing, Longline, Pacific Islands, reporting and recordkeeping requirements.

Dated: June 4, 2021.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 665 as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

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

■ 2. In § 665.14 revise paragraph (b) to read as follows:

§ 665.14 Reporting and recordkeeping.

* * * * *

(b) *Fishing record forms—*

(1) *Applicability.*

(i) Paper records. The operator of a fishing vessel subject to the requirements of §§ 665.124, 665.142, 665.162, 665.203(a)(2), 665.224, 665.242, 665.262, 665.404, 665.424, 665.442, 665.462, 665.603, 665.624, 665.642, 665.662, 665.801, 665.905, 665.935, or 665.965 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on paper report forms provided by the Regional Administrator, or electronically as specified and approved by the Regional Administrator, except as required in paragraph (b)(1)(ii) of this section or as allowed in paragraph (b)(1)(iv) of this section.

(ii) Electronic records.

(A) The operator of a fishing vessel subject to the requirements of § 665.801(b) or a Class C or D vessel subject to the requirements of § 665.801(c) must maintain on board the vessel an accurate and complete record of catch, effort, and other data electronically using a NMFS-certified electronic logbook, and must record and transmit electronically all information specified by the Regional Administrator within 24 hours after the completion of each fishing day.

(B) After the Regional Administrator has notified a permit holder subject to this section of the requirement to submit records electronically, and after the vessel has acquired the necessary NMFS-certified equipment, the vessel and any vessel operator must use the electronic logbook. A vessel operator must obtain an individually assigned user account from NMFS for use with the electronic logbook.

(C) Permit holders and vessel operators shall not be assessed any fee or other charges to obtain and use an electronic logbook that is owned and provided by NMFS. If a permit holder or vessel operator subject to this section does not use a NMFS-owned electronic logbook, the permit holder and operator must provide and maintain an alternative NMFS-certified electronic logbook.

(D) If a vessel operator is unable to maintain or transmit electronic records

because NMFS has not provided an electronic logbook, or if NMFS or a vessel operator identifies that the electronic logbook has experienced equipment (hardware or software) or transmission failure, the operator must maintain on board the vessel an accurate and complete record of catch, effort, and other data electronically or on paper report forms provided by the Regional Administrator.

(iii) The vessel operator must record on paper or electronically all information specified by the Regional Administrator within 24 hours after the completion of each fishing day. The information recorded must be signed and dated, or otherwise authenticated, in the manner determined by the Regional Administrator, and be submitted or transmitted via an approved method as specified by the Regional Administrator, and as required by this section.

(iv) In lieu of the requirements in paragraph (b)(1)(i) of this section, the

operator of a fishing vessel registered for use under a Western Pacific squid jig permit pursuant to the requirements of § 665.801(g) may participate in a state reporting system. If participating in a state reporting system, all required information must be recorded and submitted in the exact manner required by applicable state law or regulation.

(2) *Timeliness of submission.*

(i) If fishing was authorized under a permit pursuant to §§ 665.142, 665.242, 665.442, 665.404, 665.162, 665.262, 665.462, 665.662, or 665.801, and if the logbook information was not submitted to NMFS electronically within 24 hours of the end of each fishing day while the vessel was at sea, the vessel operator must submit the original logbook information for each day of the fishing trip to the Regional Administrator within 72 hours of the end of each fishing trip, except as allowed in paragraph (b)(2)(iii) of this section.

(ii) [Reserved]

(iii) If fishing was authorized under a PRIA bottomfish permit pursuant to § 665.603(a), PRIA pelagic troll and handline permit pursuant to § 665.801(f), crustacean fishing permit for the PRIA (Permit Area 4) pursuant to § 665.642(a), or a precious coral fishing permit for Permit Area X–P–PI pursuant to § 665.662, the original logbook form for each day of fishing within EEZ waters around the PRIA must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

(iv) If fishing was authorized under a permit pursuant to §§ 665.124, 665.224, 665.424, 665.624, 665.905, 665.935, or 665.965, the original logbook information for each day of fishing must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

* * * * *

[FR Doc. 2021–12067 Filed 6–8–21; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 86, No. 109

Wednesday, June 9, 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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the California 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 California Advisory Committee (Committee) will hold a meeting via web teleconference on Wednesday, August 18, 2021, from 12:30 p.m.–2:00 p.m. Pacific Time for the purpose of discussing the topic and focus of their next project.

DATES: The meeting will be held on:

- Wednesday, August 18, 2021, from 12:30 p.m.–2:00 p.m. Pacific Time

Public WebEx Registration Link:
<https://tinyurl.com/t262fpu5>.

FOR FURTHER INFORMATION CONTACT:

Brooke Peery, Designated Federal Officer (DFO), at bpeery@usccr.gov or by phone at (202) 701–1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the public WebEx registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. 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. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing

impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery at bpeery@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701–1376.

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 at: <https://www.faca.database.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkUAAQ>.

Please click on the “Meeting Details” and “Documents” links. Persons interested in the work of this Committee are also directed to the Commission’s website, <http://www.usccr.gov>, or may contact the Regional Programs Unit office at the above email address.

Agenda

- I. Welcome & Roll Call
- II. Committee Discussion
- III. Public Comment
- IV. Adjournment

Dated: June 4, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–12064 Filed 6–8–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Maryland Advisory Committee

AGENCY: 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 (FACA), that a meeting of the Maryland Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (ET) on Tuesday, July 6, 2021. The

purpose of the meeting is to continue planning the accessibility and affordability of water in Maryland.

DATES: Tuesday, July 6, 2021; 12:00 p.m. (ET).

Public Web Conference Link (video and audio): Link: <https://bit.ly/3jg6Pff>.

Phone Only: 1–800–360–9505; Access code: 199 459 9800.

FOR FURTHER INFORMATION CONTACT:

Barbara Delaviez at ero@usccr.gov or by phone at 202–539–8246.

SUPPLEMENTARY INFORMATION: The meeting is available to the public through the web link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and 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 conference details found through registering at the web link above. To request additional accommodations, please email bdelaviez@usccr.gov at least 7 days prior to the meeting.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be emailed to Barbara Delaviez at ero@usccr.gov. Persons who desire additional information may contact Barbara Delaviez at 202–539–8246.

Records and documents discussed during the meeting will be available for public viewing as they become available at www.facadatabase.gov. Persons interested in the work of this advisory committee are advised to go to the Commission’s website, www.usccr.gov, or to contact the Eastern Regional Office at the above phone number or email address.

Agenda: Tuesday, July 6, 2021; at 12:00 p.m. (ET).

- Rollcall
- Project Planning on Water Affordability
- Next Steps and Other Business
- Open Comment
- Adjournment

Dated: June 4, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021-12080 Filed 6-8-21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the California 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 California Advisory Committee (Committee) will hold a meeting via web teleconference on Thursday, July 22, 2021, from 12:30 p.m.–2:00 p.m. Pacific Time for the purpose of discussing the topic and focus of their next project.

DATES: The meeting will be held on:

- Thursday, July 22, 2021, from 12:30 p.m.–2:00 p.m. Pacific Time

Public WebEx Registration Link:
<https://tinyurl.com/sbs94ckd>.

FOR FURTHER INFORMATION CONTACT:

Brooke Peery, Designated Federal Officer (DFO), at bpeery@usccr.gov or by phone at (202) 701-1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the public WebEx registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. 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. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the Regional Programs Unit within 30 days

following the meeting. Written comments may be emailed to Brooke Peery at bpeery@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701-1376.

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 at: <https://www.faca.database.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkUAAQ>.

Please click on the “Meeting Details” and “Documents” links. Persons interested in the work of this Committee are also directed to the Commission’s website, <http://www.usccr.gov>, or may contact the Regional Programs Unit office at the above email address.

Agenda

- I. Welcome & Roll Call
- II. Committee Discussion
- III. Public Comment
- IV. Adjournment

Dated: June 4, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021-12061 Filed 6-8-21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Washington 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 Washington Advisory Committee (Committee) will hold a meeting via web teleconference on Tuesday, July 20, 2021, from 2:30 p.m.–4:00 p.m. Pacific Time for the purpose of discussing their report on use of force and potential barriers to police accountability.

DATES: The meeting will be held on:

- Tuesday, July 20, 2021, from 2:30 p.m.–4:00 p.m. Pacific Time

Public WebEx Registration Link:
<https://tinyurl.com/9tusv432>.

FOR FURTHER INFORMATION CONTACT:

Brooke Peery, Designated Federal Officer (DFO), at bpeery@usccr.gov or by phone at (202) 701-1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the

discussion. This meeting is available to the public through the public WebEx registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. 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. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery at bpeery@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701-1376.

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 at: <https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkZAAQ>.

Please click on the “Meeting Details” and “Documents” links. Persons interested in the work of this Committee are also directed to the Commission’s website, <http://www.usccr.gov>, or may contact the Regional Programs Unit office at the above email address.

Agenda

- I. Welcome & Roll Call
- II. Approval of Minutes
- III. Discussion
- IV. Public Comment
- V. Adjournment

Dated: June 4, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021-12063 Filed 6-8-21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS**Notice of Public Meeting of the Washington 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 (FACA) that the Washington Advisory Committee (Committee) to the Commission will hold a meeting via Webex on Tuesday, June 22, 2021, from 3:00 p.m. to 5:00 p.m. Pacific Time for the purpose of gathering testimony on their project on use of force and potential barriers to police accountability.

DATES: The meeting will be held on:

- Panel 5: Tuesday, June 22, 2021, from 3:00 p.m. to 5:00 p.m. Pacific Time
Access Information: Panel 5—Public Webex Registration Link: <https://tinyurl.com/6y2d37hj>.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer, (DFO) at bpeery@usccr.gov or by phone at (202) 701-1376.

SUPPLEMENTARY INFORMATION: Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at <https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkZAAQ>.

Please click on the "Committee Meetings" tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, <https://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

www.usccr.gov, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome & Roll Call
- II. Panelist Remarks
- III. Q&A
- IV. Public Comment
- V. Adjournment

Dated: June 4, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021-12072 Filed 6-8-21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS**Notice of Public Meeting of the California 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 California Advisory Committee (Committee) will hold a meeting via web teleconference on Wednesday, June 23, 2021, from 12:30 p.m.–2:00 p.m. Pacific Time for the purpose of discussing the topic and focus of their next project.

DATES: The meeting will be held on:

- Wednesday, June 23, 2021, from 12:30 p.m.–2:00 p.m. Pacific Time
Public WebEx Registration Link: <https://tinyurl.com/2emrph85>.

FOR FURTHER INFORMATION CONTACT:

Brooke Peery, Designated Federal Officer (DFO), at bpeery@usccr.gov or by phone at (202) 701-1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the public WebEx registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. 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. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing

impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery at bpeery@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701-1376.

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 at: <https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkUAAQ>.

Please click on the "Meeting Details" and "Documents" links. Persons interested in the work of this Committee are also directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit office at the above email address.

Agenda

- I. Welcome & Roll Call
- II. Committee Discussion
- III. Public Comment
- IV. Adjournment

Dated: June 4, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021-12059 Filed 6-8-21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board**

[S-59-2021]

Approval of Expansion of Subzone 18F, Lam Research Corporation, Newark, California

On April 14, 2021, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the City of San Jose, grantee of FTZ 18, requesting an expansion of Subzone 18F, subject to the existing activation limit of FTZ 18, on behalf of Lam Research Corporation, in Newark, California.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public

comment (86 FR 20658–20659, April 21, 2021). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to expand Subzone 18F was approved on June 3, 2021, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 18's 2,000-acre activation limit.

Dated: June 3, 2021.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2021–12034 Filed 6–8–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–849]

Emulsion Styrene-Butadiene Rubber From Brazil: 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) finds that the sole producer and/or exporter subject to this administrative review made sales of certain emulsion styrene-butadiene rubber (ESB rubber) from Brazil at less than normal value during the period of review (POR), September 1, 2018, through August 31, 2019.

DATES: Applicable June 9, 2021.

FOR FURTHER INFORMATION CONTACT: Drew Jackson, 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) 482–4406.

SUPPLEMENTARY INFORMATION:

Background

On January 26, 2021, Commerce published the *Preliminary Results*.¹ We invited interested parties to comment on the *Preliminary Results*.² This review covers one mandatory respondent, ARLANXEO Brasil S.A. (ARLANXEO Brasil). On February 25, 2021, Lion Elastomers, LLC (the petitioner), and

ARLANXEO Brasil filed case briefs,³ and on March 4, 2021, the petitioner filed a rebuttal brief.⁴ Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by the order is certain ESB rubber from Brazil. The merchandise subject to this order is currently classifiable under subheadings 4002.19.0015 and 4002.19.0019 of the Harmonized Tariff Schedule of the United States (HTSUS). ESB rubber is described by Chemical Abstract Services (CAS) Registry No. 9003–55–8. This CAS number also refers to other types of styrene butadiene rubber. Although the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. For a full description of the scope of the order, see the Issues and Decision Memorandum.⁵

Analysis of Comments Received

All issues raised by parties in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed 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 <https://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

We have made no changes to the weighted-average dumping margin for ARLANXEO Brasil. For detailed information, see the Issues and Decision Memorandum.

³ See Petitioner's Letter, "Emulsion Styrene-Butadiene Rubber (E-SBR) from Brazil, Administrative Review 2018–2019: Case Brief and Request to Participate in Hearing," dated February 25, 2021; see also ARLANXEO Brasil's Letter, "Emulsion Styrene-Butadiene Rubber from Brazil: ARLANXEO's Case Brief," dated February 25, 2021.

⁴ See Petitioner's Letter, "Emulsion Styrene-Butadiene Rubber (E-SBR) from Brazil, Administrative Review 2018–2019: Rebuttal Brief," dated March 4, 2021.

⁵ See Memorandum, "Issues and Decision Memorandum for the Final Results of the 2018–2019 Administrative Review of the Antidumping Order on Emulsion Styrene-Butadiene Rubber from Brazil," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Final Results of the Review

As a result of this review, Commerce determines that the following weighted-average dumping margin exists for the period September 1, 2018, through August 31, 2019:

Exporter/producer	Weighted-average margin (percent)
ARLANXEO Brasil S.A.	34.93

Disclosure of Calculations

Normally, Commerce discloses to interested parties the calculations performed in connection with the final results of an administrative review within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the *Federal Register*, in accordance with 19 CFR 351.224(b). However, as noted above, Commerce has made no changes to its margin calculations since the *Preliminary Results*. Commerce disclosed its preliminary margin calculations to interested parties, and there are no additional calculations to disclose.⁶

Assessment Rates

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b).

Pursuant to 19 CFR 351.212(b)(1), where the respondent reported the entered value of their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondent did not report entered value, we calculated the entered value in order to calculate the assessment rate. Where an importer-specific assessment rate is *de minimis* (i.e., less than 0.5 percent), the entries by that importer will be liquidated without reference to antidumping duties.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of

⁶ See Memorandum, "Antidumping Duty Administrative Review of Emulsion Styrene-Butadiene Rubber from Brazil: Final Results Analysis Memorandum for ARLANXEO Brasil S.A.," dated concurrently with this notice (citing Memorandum, "Antidumping Duty Administrative Review of Emulsion Styrene Butadiene Rubber from Brazil: Preliminary Results Analysis Memorandum for ARLANXEO Brasil S.A.," dated January 15, 2021).

¹ See *Emulsion Styrene-Butadiene Rubber from Brazil: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019*, 86 FR 7066 (January 26, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² *Id.*

merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.⁷

For entries of subject merchandise during the POR produced by ARLANXEO Brasil for which it did not know the merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.⁸

Consistent with its recent notice,⁹ 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 the subject merchandise 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) of the Act: (1) The cash deposit rate for ARLANXEO Brasil S.A. will be equal to the weighted-average dumping margin established in the final results of this review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of this proceeding, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 19.61 percent, the all-others rate established in the LTFV investigation.¹⁰

⁷ See section 751(a)(2)(C) of the Act.

⁸ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

⁹ 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).

¹⁰ See *Emulsion Styrene-Butadiene Rubber from Brazil: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative*

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)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notice to Interested Parties

We are issuing and publishing these results of administrative review in accordance with sections 751(a) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: June 3, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Changes Since the Preliminary Results
- V. Discussion of the Issues
 - Comment 1: Cost Methodology
 - Comment 2: Level of Trade, Constructed Export Price Offset
- VI. Recommendation

[FR Doc. 2021-12078 Filed 6-8-21; 8:45 am]

BILLING CODE 3510-DS-P

Determination of Critical Circumstances, 82 FR 33048 (July 19, 2019).

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-854]

Certain Steel Nails From Taiwan: Preliminary Determination of No Shipments in the Antidumping Duty Administrative Review; 2019-2020

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Create Trading Co., Ltd. (Create Trading), the sole company under review, made no shipments of certain steel nails from Taiwan during the period of review (POR), July 1, 2019, to June 30, 2020. We invite interested parties to comment on this preliminary determination of no shipments.

DATES: Applicable June 9, 2021.

FOR FURTHER INFORMATION CONTACT: Suzanne Lam, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0783.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2020, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on certain steel nails from Taiwan.¹ Based on timely requests for administrative review,² on September 3, 2020, Commerce published the notice of initiation for an administrative review, covering 141 companies, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.221(c)(1)(i).³

On September 21, 2020, the petitioner timely withdrew its request for administrative review of all companies it originally requested, except for one

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review*, 85 FR 39531 (July 1, 2020).

² See Petitioner's Letter, "Request for Administrative Review," dated July 31, 2020; see also Letter, "Administrative Review Request," dated July 31, 2020, collectively from: Liang Chyuan Industrial Co., Ltd., Romp Coil Nail Industries Inc., UJL Industries Co., Ltd., Hor Liang Industrial Corp., Yu Chi Hardware Co., Ltd., Trim International Inc., China Staple Enterprise Corporation, Hoyi Plus Co., Ltd., and Zon Mon Co., Ltd.

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 54983 (September 3, 2020) (*Initiation Notice*).

company, Create Trading.⁴ Subsequently, the nine Taiwanese companies that had self-requested an administrative review, also withdrew their requests for review.⁵ Accordingly, on October 15, 2020,⁶ and December 10, 2020,⁷ pursuant to 19 CFR 351.213(d)(1), Commerce rescinded the administrative review, in part, of all companies under review except for Create Trading. The review remains active only with respect to Create Trading, which filed a statement of no sales.⁸

On November 23, 2020, the petitioner submitted comments regarding Create Trading's statement of no sales.⁹ At Commerce's request, U.S. Customs and Border Protection (CBP) provided entry documents associated with Create Trading's claim.¹⁰ Subsequently, on March 5, 2021, Commerce requested additional information from Create Trading regarding the CBP entry documents *vis-a-vis* its statement of no sales.¹¹ On March 19, 2021, Create Trading responded to Commerce's request for information,¹² and on April 5, 2021, the petitioner submitted comments regarding Create Trading's response.¹³

⁴ See Petitioner's Letter, "Withdrawal of Request for Administrative Reviews," dated September 21, 2020.

⁵ See Letter, "Withdrawal of Administrative Review Request," dated November 30, 2020, collectively from: Liang Chyuan Industrial Co., Ltd., Romp Coil Nail Industries Inc., UJL Industries Co., Ltd., Hor Liang Industrial Corp., Yu Chi Hardware Co., Ltd., Trim International Inc., China Staple Enterprise Corporation, Hoyi Plus Co., Ltd., and Zon Mon Co., Ltd.

⁶ See *Certain Steel Nails From Taiwan: Partial Rescission of Antidumping Duty Administrative Review; 2019–2020*, 85 FR 65366 (October 15, 2020).

⁷ See *Certain Steel Nails from Taiwan: Partial Rescission of Antidumping Duty Administrative Review; 2019–2020*, 85 FR 79470 (December 10, 2020).

⁸ See Create Trading's Letter, "Statement of No Sales to the United States," dated September 21, 2020 (Statement of No Sales). Specifically, Create Trading certified that all of its exports of subject merchandise were produced by unaffiliated producers that had knowledge of final destination to the United States at the time of sale to Create Trading, and thus, Create Trading claims it has no reviewable sales for this POR.

⁹ See Petitioner's Letter, "Comments on Create Trading Co., Ltd.'s Statement of No Sales to the United States," dated November 23, 2020.

¹⁰ See Memorandum, "Create Trading Co., Ltd.—Placement of Entry Documentation on the Record," dated May 6, 2021.

¹¹ See Commerce's Letter, "Request for Information," dated March 5, 2021.

¹² See Create Trading's Letter, "Response to Request for Information," dated March 19, 2021.

¹³ See Petitioner's Letter, "Comments on Create Trading Co., Ltd.'s Response to Request for Information," dated April 2, 2021.

Scope of the Order¹⁴

The merchandise covered by this order is certain steel nails from Taiwan. The certain steel nails subject to the order are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to this order also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description, available in the Appendix to this notice, remains dispositive.

Preliminary Determination of No Shipments

Create Trading reported that it had no reviewable sales during the POR because its unaffiliated producers had knowledge of the final destination of the subject merchandise that they produced and sold to Create Trading, and which Create Trading resold to U.S. customers during the POR. Create Trading provided sales documentation, such as invoices and packing lists from its unaffiliated producers, as well as accounting records as evidence in support of its claim.¹⁵ Based on the information provided by Create Trading, which we find is supported by entry documents provided by CBP, we preliminarily determine that Create Trading was not the first party in the transaction chain to have knowledge that the merchandise was destined for the United States, and, thus, Create Trading is not considered the exporter of subject merchandise during the POR for purposes of this review. Specifically, the record demonstrates that Create Trading's unaffiliated suppliers had knowledge that the steel nails they produced and sold to Create Trading were destined for the United States. Thus, we preliminarily determine that Create Trading had no shipments during the POR.

¹⁴ 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*).

¹⁵ See Create Trading's Statement of No Sales.

Commerce finds that, based on the clarification in the 2003 *Assessment of Antidumping Duties* notice regarding the reseller policy, we will not rescind the review in these circumstances but, rather, complete the review with respect to Create Trading and issue appropriate instructions to CBP after the completion of the review.¹⁶ Specifically, we find it appropriate in this case to instruct CBP at the completion of the review to liquidate any existing entries of subject merchandise produced by Create Trading's unaffiliated producers and exported by Create Trading at the rate applicable to the unaffiliated producers, which, as discussed below, in this case is the all-others rate.¹⁷

Public Comment

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.¹⁸ 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.¹⁹ 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.²⁰ Case and rebuttal briefs must be filed electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) and must also be served on interested parties.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document 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.²¹ Hearing requests should contain: (1) The

¹⁶ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954, 23954 (May 6, 2003) (*Assessment of Antidumping Duties*).

¹⁷ See, e.g., *Certain Frozen Warmwater Shrimp from India: Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 77610, 77612 (December 19, 2008) (*Shrimp from India*); *Certain Pasta from Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 23974, 23977 (April 29, 2011), unchanged in *Pasta From Turkey: Notice of Final Results of the 14th Antidumping Duty Administrative Review*, 76 FR 68399 (November 4, 2011).

¹⁸ See 19 CFR 351.309(c)(1)(ii).

¹⁹ See 19 CFR 351.309(d)(1).

²⁰ See 19 CFR 351.309(c)(2) and (d)(2); see also *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19: Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

²¹ See 19 CFR 351.310(c).

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 time and date to be determined.²²

Commerce intends to issue the final results of this administrative review, including the results of its analysis raised in any written briefs, no later than 120 days after the publication of these preliminary results in the **Federal Register**, unless otherwise extended.²³

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.²⁴

As discussed above, we preliminarily determine that Create Trading was not the first party in the transaction chain to have knowledge that the merchandise was destined for the United States, and thus Create Trading is not considered the exporter of subject merchandise during the POR for purposes of this review. Consistent with the 2003 *Assessment of Antidumping Duties* notice and reseller policy, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by Create Trading's unaffiliated producers and exported by Create Trading at the rate applicable to the producer(s).²⁵ Because none of the producers have their own rates, we will instruct CBP to liquidate entries at the all-others rate from the investigation, as revised, of 2.16 percent,²⁶ in accordance with the reseller policy.

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 in effect for all shipments of the subject merchandise 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) For merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment; (2) if the exporter is not a firm covered in a prior review, or the original investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be 2.16 percent, the all-others cash deposit rate established in the *Amended LTFV Final*.²⁷ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and sections 19 CFR 351.213(h)(1) and 351.221(b)(4).

Dated: June 3, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The merchandise covered by this order is certain steel nails having a nominal shaft length not exceeding 12 inches.²⁸ Certain

steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted.

Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope of this order are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also, excluded from the scope are certain steel nails with a nominal shaft length of one inch or less that are (a) a component of an unassembled article, (b) the total number of nails is sixty (60) or less, and (c) the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.*, furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also, excluded from the scope of this order are steel nails that meet the specifications of

²² *Id.*

²³ See section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

²⁴ See 19 CFR 351.212(b).

²⁵ See, *e.g.*, *Shrimp from India*, 73 FR at 77612; *Pasta From Turkey*, 76 FR at 68400.

²⁶ The all-others rate from the underlying investigation was revised in *Certain Steel Nails from Taiwan: Notice of Court Decision Not in Harmony with Final Determination in Less than Fair Value Investigation and Notice of Amended Final Determination*, 82 FR 55090, 55091 (November 20, 2017) (*Amended LTFV Final*).

²⁷ *Id.*

²⁸ The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision).

Also, excluded from the scope of this order are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.20.00 and 7317.00.30.00.

Also, excluded from the scope of this order are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

Also, excluded from the scope of this order are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also, excluded from the scope of this order are thumb tacks, which are currently classified under HTSUS subheading 7317.00.10.00.

Certain steel nails subject to this order are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to this order also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

[FR Doc. 2021-12077 Filed 6-8-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-557-822]

Utility Scale Wind Towers From Malaysia: Final Affirmative Countervailing Duty Determination

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 utility scale wind towers (wind towers) from Malaysia.

DATES: Applicable June 9, 2021.

FOR FURTHER INFORMATION CONTACT: Nathan James, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5305.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 2021, Commerce published the *Preliminary Determination* in this investigation in the **Federal Register**.¹ The petitioner in this investigation is the Wind Tower Trade Coalition. In addition to the Government of Malaysia, the mandatory respondent in this investigation is CS Wind Malaysia Sdn Bhd (CS Wind).

A summary of the events that occurred since Commerce published the *Preliminary Determination* is found in the Issues and Decision Memorandum, which is hereby adopted by this notice.² 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 at <http://enforcement.trade.gov/frn/>.

Period of Investigation

The period of investigation is January 1, 2019, through December 31, 2019.

Scope of the Investigation

The products covered by this investigation are wind towers from Malaysia. For a complete description of the scope of this investigation, see Appendix I.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.³

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation, and the issues raised in

¹ See *Utility Scale Wind Towers from Malaysia: Preliminary Affirmative Countervailing Duty Determination*, 86 FR 15887 (March 25, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

² See Memorandum, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Utility Scale Wind Towers from Malaysia," dated concurrently with this notice (Issues and Decision Memorandum).

³ See Commerce's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Malaysia: In Lieu of Verification Questionnaire," dated March 25, 2021.

the case and rebuttal briefs by parties in this investigation, are discussed in the Issues and Decision Memorandum. For a list of the issues raised by parties, and to which we responded in the Issues and Decision Memorandum, see Appendix II of this notice.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.⁴ For a full description of the methodology underlying our final determination, see the Issues and Decision Memorandum.

In making this final determination, Commerce is relying, in part, on facts otherwise available pursuant to section 776(a) of the Act. For a full discussion of our application of facts available, see the *Preliminary Determination*⁵ and Comment 3 of the accompanying Issues and Decision Memorandum.

Changes Since the Preliminary Determination

Based on our review and analysis of the record and the comments received from parties, we made certain changes to the countervailable subsidy rate calculation for CS Wind. For a discussion of these changes, see the Issues and Decision Memorandum.

All-Others Rate

Section 705(c)(5)(A) of the Act provides that in the final determination, Commerce shall determine an all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any rates that are zero, *de minimis*, or based entirely under section 776 of the Act.

In this investigation, Commerce calculated an individual estimated countervailable subsidy rate for CS Wind that is not zero, *de minimis*, or based entirely on facts otherwise available. Accordingly, we have assigned CS Wind's subsidy rate to all

⁴ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁵ See Memorandum, "Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Utility Scale Wind Towers from Malaysia," dated March 19, 2021 at 7.

other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.⁶

Final Determination

Commerce determines that the following countervailable subsidy rates exist:

Company	Subsidy rate (percent)
CS Wind Malaysia Sdn Bhd	6.42
All Others	6.42

Disclosure

Commerce intends to disclose to interested parties its calculations and analysis performed in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section that were entered, or withdrawn from warehouse, for consumption on or after March 25, 2021, the date of publication of the *Preliminary Determination* in the **Federal Register**.

We are directing CBP to continue to suspend liquidation of all imports of the subject merchandise from Malaysia that were entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The suspension of liquidation instructions will remain in effect until further notice. We are also directing CBP to collect countervailing duty deposits at the rate described above.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all cash deposits will be refunded or canceled.

⁶ CS Wind reported its sales values as public information.

ITC Notification

In accordance with section 705(d) of the Act, Commerce will notify the ITC of its final affirmative determination. Because Commerce's final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of wind towers from Malaysia no later than 45 days after our final determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding APO

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the disposition 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 violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 771(i) of the Act, and 19 CFR 351.210(c).

Dated: June 2, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.*, where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.*, flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.*, accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. Subsidies Valuation
- V. Use of Facts Available
- VI. Analysis of Programs
- VII. Discussion of the Issues
 - Comment 1: Whether Commerce Should Determine that the Government of Malaysia (GOM) Duty Exemption Program Is Specific on the Basis of Facts Available
 - Comment 2: Whether the GOM Has an Effective System in Place to Track Input Consumption Pursuant to 19 CFR 351.519
 - Comment 3: Whether Commerce Should Revise Its Analysis of the Electricity for Less Than Adequate Remuneration (LTAR) Program
 - Comment 4: Whether Commerce Should Select A Different Tier-One Benchmark to Measure the Adequacy of Remuneration for CS Wind's Land
 - Comment 5: Whether Commerce Should Modify the Denominator Used in Its Benefit Calculations

Comment 6: Whether Commerce Incorrectly Declined to Initiate an Investigation into the Cut-to-Length (CTL) Plate for LTAR New Subsidy Allegation (NSA)

VIII. Recommendation

[FR Doc. 2021–12024 Filed 6–8–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–059, C–533–874]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the People's Republic of China and India: Countervailing Duty Orders; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The Department of Commerce (Commerce) published in the **Federal Register** on February 1, 2018, the countervailing duty orders on certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from the People's Republic of China (China) and India. This notice corrects the subsidy rate calculated for all other exporters/producers from India.

FOR FURTHER INFORMATION CONTACT: Eliza Siordia, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3878.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of February 1, 2018, in FR Doc 2018–02045, on page 4638, in the table under the subheading “Exporter/Producer from India,” correct the subsidy rate (percent) for “All-Others” to 22.41 percent.

Background

On February 1, 2018, Commerce published in the **Federal Register** the countervailing duty orders on cold-drawn mechanical tubing from China and India.¹ We incorrectly stated the subsidy rate for all-other exporters/producers from India as 22.40 percent due to a typographical error.² The corrected subsidy rate is as follows:

Exporter/producer from India	Subsidy rate (percent <i>ad valorem</i>)
All Others	22.41

We hereby notify the public in this notice we should have identified the all-others subsidy rate as 22.41 percent. We intend to notify U.S. Customs and Border Protection of this correction.

Notification to Interested Parties

This notice is issued and published in accordance with section 706(a) of the Tariff Act of 1930, as amended, and 19 CFR 351.211(b).

Dated: June 3, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–12076 Filed 6–8–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NOAA Satellite Customer Questionnaire

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before August 9, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at Adrienne.thomas@noaa.gov. Please

reference OMB Control Number 0648–0227 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or specific questions related to collection activities should be directed to Mark Turner at Mark.W.Turner@noaa.gov, 301–817–4446.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

The National Oceanic and Atmospheric Administration (NOAA) operates a minimum of four meteorological satellite imagery transmission systems, two from geostationary operational environmental (GOES) satellites and two from polar-orbiting television infrared operational (TIROS) satellites. In addition, legacy backup and standby polar-orbiting satellites continue to be operated as their health permits. The data transmitted are available worldwide, and any user can establish a ground receiving station for reception of the data without the prior consent, notification, or other approval from NOAA. With such an open access policy, it is currently not possible to have a comprehensive understanding of the range and numbers of the data users and application of the data received and/or used. The purpose of collecting the information contained in the “Questionnaire” is to satisfy the following objectives: (1) To comply with international agreements such as the Department of Commerce (DOC)/NOAA's memorandum of understanding (MOU) with the World Meteorological Organization (WMO), so that NOAA can provide environmental satellite data and processed satellite data products to the public domain, and (2) To improve Government efficiencies of data dissemination using cost-saving technologies to minimize the expenditure of personnel and financial resources. The NOAA Policy on Partnerships in the Provision of Environmental Information is also pertinent to this information collection. This policy was developed to strengthen the partnership among government, academia, and the private sector, which provides the nation with high quality environmental information.

The collection of information from a respondent is initiated when an individual contacts National Environmental Satellite, Data, and Information Service (NESDIS) via letter,

¹ See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China and India: Countervailing Duty Orders*, 83 FR 4637 (February 1, 2018).

² See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final*

Affirmative Countervailing Duty Determination, 82 FR 58172 (December 11, 2017). Commerce calculated a final all-others subsidy rate of 22.41 percent. We did not issue an amended final determination.

telephone, fax or email, or when they visit a web page. If the nature of the contact indicates the individual may operate a satellite receiving station for the acquisition of NOAA satellite data or may use NOAA satellite data or services, the individual is requested to complete an on-line electronic questionnaire, which is found on a NOAA internet site. The questionnaire is completed at the respondent's discretion. The information received is used by NOAA for short-term operations and long-term planning. Collection of this data assists in complying with the terms of the MOU with the WMO, MOU with DOC, and NOAA on areas of common interest and other international agreements.

II. Method of Collection

Information will be collected via an online questionnaire.

III. Data

OMB Control Number: 0648–0227.

Form Number(s): None.

Type of Review: Regular submission [extension of a current information collection].

Affected Public: Federal government, Not-for-profit institutions.

Estimated Number of Respondents: 30.

Estimated Time per Response: 6 minutes per response.

Estimated Total Annual Burden Hours: 30 hours.

Estimated Total Annual Cost to Public: \$0.

Respondent's Obligation: Voluntary.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms 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 may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–12060 Filed 6–8–21; 8:45 am]

BILLING CODE 3510–HR–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Employers of National Service Enrollment Form and Annual Survey; Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service, operating as AmeriCorps, has submitted a public information collection request (ICR) Employers of National Service Enrollment Form and Annual Survey for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by July 9, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Sharron Walker-Tendai, at 202–606–3904 or by email to stendai@cns.gov.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of AmeriCorps, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on March 19, 2021 at Vol. 86 FR Page Number 14885. This comment period ended May 18, 2021. Zero public comments were received from this Notice.

Title of Collection: Employers of National Service Enrollment Form and Annual Survey.

OMB Control Number: 3045–0175.

Type of Review: Renewal.

Respondents/Affected Public: Businesses and Organizations, State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 1,180.

Total Estimated Number of Annual Burden Hours: 490.

Abstract: This is a request to renew the Employers of National Service Enrollment Form and Annual Survey. Organizations from all sectors either seeking to become or already established as Employers of National Service will be filling out these forms. This includes businesses, nonprofits, institutions of higher education, school districts, state/local governments, and federal agencies. The purpose of the enrollment form is to document what the organization is committing to doing as an Employer of National Service and provide its contact information to AmeriCorps. The information gathered on the enrollment form will also allow AmeriCorps to display the organization's information accurately online as a resource for job seekers. It will also enable AmeriCorps to speak to the diversity within the program's membership, both for internal planning and external audience use. The purpose of the survey form is to track what actions an employer has taken in the past year, gather stories of success or impact, collect quantitative hiring data relating to AmeriCorps and Peace Corps

alumni, and provide organizations with an opportunity to update their contact and location data.

AmeriCorps seeks to renew the current information collection. The revisions are intended to streamline questions, making it easier for organizations to complete the form. The information collection will otherwise be used in the same manner as the existing application. AmeriCorps seeks to continue using the current application until the revised application is approved by OMB. The current application expires on July 31, 2022.

Dated: June 3, 2021.

Erin Dahlin,

Chief Program Advisor.

[FR Doc. 2021-12058 Filed 6-8-21; 8:45 am]

BILLING CODE 6050-28-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2021-SCC-0084]

Agency Information Collection Activities; Comment Request; Federal Perkins/NDSL Loan Assignment Form

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 August 9, 2021.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2021-SCC-0084. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the [regulations.gov](http://www.regulations.gov) site is not available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance

Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D Washington, DC 20202-8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377-4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Perkins/NDSL Loan Assignment Form.

OMB Control Number: 1845-0048.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 75,072.

Total Estimated Number of Annual Burden Hours: 37,537.

Abstract: Institutions participating in the Federal Perkins Loan program use the assignment form to assign loans to the Department for collection without recompense, transferring the authority to collect on the loan. This request is for continued approval of the paper based assignment form and the electronic process. The electronic process allows for batch processing as well as individual processing. The same

information is being requested in both processing methods.

Dated: June 3, 2021.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021-12023 Filed 6-8-21; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection Extension

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy, pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years an information collection request with the Office of Management and Budget (OMB).

DATES: Comments regarding this proposed information collection must be received on or before August 9, 2021. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments should include DOCKET # EERE-2021-VT-00XX in the subject line of the message and may be sent to: Mr. Mark Smith, Office of Energy Efficiency and Renewable Energy (EE-3V), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585-0121, or by email at Mark.Smith@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mr. Mark Smith, Office of Energy Efficiency and Renewable Energy (EE-3V), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585-0121, (202) 287-5151, Mark.Smith@ee.doe.gov.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of DOE, including whether the information shall have practical utility; (b) the accuracy of DOE's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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 through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.*: 1910–5101;

(2) *Information Collection Request*

Title: Annual Alternative Fuel Vehicle Acquisition Report for State Government and Alternative Fuel Provider Fleets;

(3) *Type of Review*: Extension;

(4) *Purpose*: The information is required so that DOE can determine whether alternative fuel provider and State government fleets are in compliance with the alternative fueled vehicle acquisition mandates of sections 501 and 507(o) of the Energy Policy Act of 1992, as amended, (EPAct), whether such fleets should be allocated credits under section 508 of EPAct, and whether fleets that opted into the alternative compliance program under section 514 of EPAct are in compliance with the applicable requirements. The information collection instrument is completed online, via a password protected web page; for review purposes, the same instrument is available online at https://www1.eere.energy.gov/vehiclesandfuels/epact/docs/reporting_spreadsheet.xls.

(5) *Annual Estimated Number of Respondents*: 303;

(6) *Annual Estimated Number of Total Responses*: 335;

(7) *Annual Estimated Number of Burden Hours*: 1,970;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden*: \$120,000.

Statutory Authority: 42 U.S.C. 13251 *et seq.*

Signing Authority: This document of the Department of Energy was signed on June 3, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 3, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2021–12021 Filed 6–8–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP21–887–000]

Southwest Gas Corporation v. El Paso Natural Gas Company, LLC; Notice of Complaint

Take notice that on June 2, 2021, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2021), Southwest Gas Corporation (Complainant) filed a formal complaint against El Paso Natural Gas Company, LLC (EPNG or Respondent), alleging that the Respondent failed to comply with the Natural Gas Act, the Commission's regulations, the Commission's precedent, and EPNG's tariff when EPNG declared a Critical Operating Condition for the period from February 15, 2021 to February 17, 2021, all as more fully explained in its complaint.

The Complainant certifies that copies of the complaint were served on the contacts listed for Respondent in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed

proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov, or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 23, 2021.

Dated: June 3, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–12069 Filed 6–8–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–1821–006.

Applicants: Panda Stonewall LLC.

Description: Compliance filing: Informational Filing (ER17–1821) under Schedule 2 of PJM's OATT to be effective N/A.

Filed Date: 6/3/21.

Accession Number: 20210603–5091.

Comments Due: 5 p.m. ET 6/24/21.

Docket Numbers: ER20–1948–001.

Applicants: Potomac-Appalachian Highline Transmission, LLC, PJM Interconnection, L.L.C.

Description: Compliance filing: PATH submits Order 864 Compliance Filing re: Deficiency Letter to be effective N/A.

Filed Date: 6/3/21.

Accession Number: 20210603–5109.

Comments Due: 5 p.m. ET 6/24/21.

Docket Numbers: ER20–1951–001.

Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

Description: Compliance filing: MAIT submits filing in response to Commission's 5/4/2021 Deficiency Letter to be effective N/A.

Filed Date: 6/3/21.

Accession Number: 20210603–5122.

Comments Due: 5 p.m. ET 6/24/21.

Docket Numbers: ER21–1191–005.

Applicants: Southwestern Electric Power Company.

Description: Tariff Amendment: Amended and Restated Minden PSA to be effective 1/1/2018.

Filed Date: 6/3/21.

Accession Number: 20210603–5113.

Comments Due: 5 p.m. ET 6/24/21.

Docket Numbers: ER21–2064–000.

Applicants: Pacific Gas and Electric Company.

Description: Tariff Cancellation: Termination of La Paloma GSFA and GIA (TO SA 18) to be effective 8/3/2021.

Filed Date: 6/2/21.

Accession Number: 20210602–5114.

Comments Due: 5 p.m. ET 6/23/21.

Docket Numbers: ER21–2065–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2021–06–02_Real-Time RSG Make Whole Payment Filing to be effective 8/2/2021.

Filed Date: 6/2/21.

Accession Number: 20210602–5115.

Comments Due: 5 p.m. ET 6/23/21.

Docket Numbers: ER21–2066–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2021–06–02_Attachment FF Access to Transmission Planning Information to be effective 8/2/2021.

Filed Date: 6/2/21.

Accession Number: 20210602–5117.

Comments Due: 5 p.m. ET 6/23/21.

Docket Numbers: ER21–2067–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 6084; Queue No. AF2–292 to be effective 5/4/2021.

Filed Date: 6/2/21.

Accession Number: 20210602–5119.

Comments Due: 5 p.m. ET 6/23/21.

Docket Numbers: ER21–2068–000.

Applicants: ITC Midwest LLC.

Description: MISO Schedule 50 Cost Recovery Filing of ITC Midwest, LLC.

Filed Date: 6/2/21.

Accession Number: 20210602–5165.

Comments Due: 5 p.m. ET 6/23/21.

Docket Numbers: ER21–2069–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA, Service Agreement No. 4765; Queue No. AB1–123 to be effective 7/3/2021.

Filed Date: 6/3/21.

Accession Number: 20210603–5031.

Comments Due: 5 p.m. ET 6/24/21.

Docket Numbers: ER21–2073–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Rate Schedule FERC No. 327 between Tri-State and United Power to be effective 6/4/2021.

Filed Date: 6/3/21.

Accession Number: 20210603–5071.

Comments Due: 5 p.m. ET 6/24/21.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.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: June 3, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–12068 Filed 6–8–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA–04–2020–2504; FRL 10023–83-Region 4]

JCC Environmental Superfund Site Picayune, Mississippi; Notice of Extended Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extended comment period.

SUMMARY: The United States Environmental Protection Agency published a notice of settlement on April 9, 2021, FRL 10020–84–Region 4, concerning the JCC Environmental Superfund Site located in Picayune, Mississippi. The settlement addresses

recovery of CERCLA costs for a cleanup action performed by the EPA at the Site. The settling parties listed with the settlement on the Agency's website was incomplete. The complete listing of parties is now available via the below web address. The agency will be extending the comment period 30 days after the date of this publication.

DATES: The Agency will consider public comments on the settlement until July 9, 2021. The Agency will consider all comments received and may modify or withdraw its consent to the proposed settlement if comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from the Agency by contacting Ms. Paula V. Painter, Program Analyst, using the contact information provided in this notice. Comments may also be submitted by referencing the Site's name through one of the following methods:

Internet: <https://www.epa.gov/aboutepa/about-epa-region-4-southeast#r4-public-notices>.

Email: Painter.Paula@epa.gov.

FOR FURTHER INFORMATION CONTACT:

Paula V. Painter at (404) 562–8887

Email: Painter.Paula@epa.gov.

Erika White,

Acting Chief, Enforcement Branch, Superfund & Emergency Management Division.

[FR Doc. 2021–12054 Filed 6–8–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 19–329; FRS 30776]

Federal Advisory Committee Act; Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC or Commission) Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States (Task Force) will hold its next meeting via live internet link.

DATES: July 8, 2021. The meeting will come to order at 10:00 a.m. EDT.

ADDRESSES: The meeting will be held via conference call and be available to

the public via live feed from the FCC's web page at www.fcc.gov/live.

FOR FURTHER INFORMATION CONTACT:

Jesse Jachman, Designated Federal Officer, Federal Communications Commission, Wireline Competition Bureau, (202) 418-2668, or email: Jesse.Jachman@fcc.gov; Elizabeth Cuttner, Deputy Designated Federal Officer, Federal Communications Commission, Wireline Competition Bureau, (202) 418-2145, or email Elizabeth.Cuttner@fcc.gov; or Stacy Ferraro, Deputy Designated Federal Officer, Wireless Telecommunications Bureau, (202) 418-0795 or email Stacy.Ferraro@fcc.gov.

SUPPLEMENTARY INFORMATION: The meeting will be held on July 8, 2021, at 10:00 a.m. EDT and may be viewed live, by the public, at <http://www.fcc.gov/live>. Any questions that arise during the meeting should be sent to PrecisionAgTF@fcc.gov and will be answered at a later date. Members of the public may submit comments to the Task Force in the FCC's Electronic Comment Filing System, ECFS, at www.fcc.gov/ecfs. Comments to the Task Force should be filed in GN Docket No. 19-329. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted but may not be possible to fill.

Proposed Agenda: At this meeting, the Task Force will hear updates from the Working Group leadership. This agenda may be modified at the discretion of the Task Force Chair and the Designated Federal Officer.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2021-12050 Filed 6-8-21; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 16-185; DA 21-585; FRS 29338]

World Radiocommunication Conference Advisory Committee Schedules Fourth Meeting and Meetings of Its Informal Working Groups

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the fourth meeting of the World Radiocommunication Conference Advisory Committee (WAC) will be held on Tuesday, September 28, 2021 at 11:00 a.m. EDT. Prior to this fourth WAC meeting, the Advisory Committees' Informal Working Groups (IWG-1, IWG 2, IWG-3, and IWG-4) will have their meetings as set forth below. Due to exceptional circumstances, the fourth WAC meeting and its IWG meetings will be convened as virtual meetings with remote participation only. The meetings are open to the public. This fourth WAC meeting will consider status reports and recommendations from its Informal Working Groups (IWG-1, IWG-2, IWG-3, and IWG-4) concerning preparation for the 2023 World Radiocommunication Conference (WRC-23). A draft agenda of the fourth WAC meeting and the IWG meeting schedule with participation information are attached. The IWG meeting agendas and audience participation information, all scheduled meeting dates and updates can be found at the Commission's WRC-23 website (www.fcc.gov/wrc-23).

DATES: IWG-4: Tuesday, June 15, 2021 (11:00 a.m.-1:00 p.m. EDT); IWG-3: Tuesday, June 15, 2021 (1:00 p.m.-3:00 p.m. EDT); IWG-4: Wednesday, July 7, 2021 (11:00 a.m.-1:00 p.m. EDT); IWG-3: Wednesday, July 7, 2021 (1:00 p.m.-3:00 p.m. EDT); IWG-4: Thursday, July 29, 2021 (11:00 a.m.-1:00 p.m. EDT); IWG-3: Thursday, July 29, 2021 (1:00 p.m.-3:00 p.m. EDT); IWG-1: Tuesday, August 17, 2021 (11:00 a.m.-12:30 p.m. EDT); IWG-2: Tuesday, August 17, 2021 (3:00 p.m.-4:30 p.m. EDT); IWG-1: Tuesday, September 2, 2021 (11:00 a.m.-12:30 p.m. EDT); IWG-2: Tuesday, September 2, 2021 (1:00 p.m.-2:30 p.m. EDT); and the 4th WAC Meeting: Tuesday, September 28, 2021 (11:00 a.m. EDT).

ADDRESSES: 4th WAC Meeting: www.fcc.gov/live; IWG meetings will be held virtually.

FOR FURTHER INFORMATION CONTACT:

Dante Ibarra, Designated Federal Official, World Radiocommunication Conference Advisory Committee, FCC International Bureau, Global Strategy and Negotiation Division, at Dante.Ibarra@fcc.gov, (202)-418-0610 or WRC-23@fcc.gov.

SUPPLEMENTARY INFORMATION: The FCC established the Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2023 World Radiocommunication Conference (WRC-23).

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, this notice advises interested persons of the fourth meeting of the Advisory Committee and its Informal Working Groups scheduled meetings. The Commission's WRC-23 website (www.fcc.gov/wrc-23) contains the latest information on the IWG meeting agendas and audience participation information, all scheduled meeting dates and updates, and WRC-23 Advisory Committee matters. The fourth WAC meeting will be broadcast live with open captioning over the internet from the FCC Live web page at www.fcc.gov/live. There will be audience participation available; send live questions to livequestions@fcc.gov only during this meeting.

The proposed agenda for the fourth WAC meeting and IWG meeting schedule with participation information are as follows:

Agenda

Fourth Meeting of the World Radiocommunication Conference Advisory Committee

Federal Communications Commission

September 28, 2021; 11:00 a.m. ET

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Third Meeting
4. IWG Reports and Documents
5. Future Meetings
6. Other Business

WRC-23 Advisory Committee

Schedule of Meetings of Informal Working Groups 1, 2, 3 and 4

Informal Working Group 1: Maritime, Aeronautical and Radar Services

Contacts

Chair—Damon Ladson, dladson@hwglaw.com, telephone: (202) 730-1315

Vice Chair—Kim Kolb, kim.l.kolb@boeing.com, telephone: (703) 465-3373

FCC Representatives

Louis Bell, louis.bell@fcc.gov, telephone: (202) 418-1641

Greg Baker, gregory.baker@fcc.gov, telephone: (202) 418-0611

IWG-1—Meeting 1

Date: Tuesday, August 17, 2021

Time: 11:00 a.m.–12:30 p.m. EDT

WebEx meeting number (access code): 199 173 8628

WebEx meeting password: KWmHPa2J7i3

Join by phone: +1-415-527-5035, 1991738628## US Toll

IWG-1—Meeting 2

Date: Tuesday, September 2, 2021

Time: 11:00 a.m.–12:30 p.m. EDT

WebEx meeting number (access code): 199 678 8704

WebEx meeting password: HQjvACxP463

Join by phone: +1-415-527-5035, 1996788704## US Toll

Informal Working Group 2: Terrestrial Services

Contacts

Chair—Jayne Stancavage, jayne.stancavage@intel.com, telephone: (408) 887-3186

Vice Chair—Jennifer Oberhausen, joberhausen@ctia.org, telephone: (202) 497-9798

FCC Representatives

Dante Ibarra, dante.ibarra@fcc.gov, telephone: (202) 418-0610

Louis Bell, louis.bell@fcc.gov, telephone: (202) 418-1641

IWG-2—Meeting 1

Date: Tuesday, August 17, 2021

Time: 3:00 p.m.–4:30 p.m. EDT

WebEx meeting number (access code): 199 496 5289

WebEx meeting password: 3yyD2uUHKd3

Join by phone: +1-415-527-5035, 1994965289## US Toll

IWG-2—Meeting 2

Date: Tuesday, September 2, 2021

Time: 1:00 p.m.–2:30 p.m. EDT

WebEx meeting number (access code): 199 056 7266

WebEx meeting password: xStqCP2jp44

Join by phone: +1-415-527-5035, 1990567266## US Toll

Informal Working Group 3: Space Services

Contacts

Chair—Zachary Rosenbaum, zachary.rosenbaum@ses.com, telephone: (814) 233-7373

Vice Chair—Vacant

FCC Representatives

Clay DeCell, clay.decell@fcc.gov, telephone: (202) 418-0803

Kathryn Medley, kathryn.medley@fcc.gov, telephone: (202) 418-1211

Eric Grodsky, eric.grodsky@fcc.gov, telephone: (202) 418-0563

Dante Ibarra, dante.ibarra@fcc.gov, telephone: (202) 418-0610

IWG-3—Meeting 1

Date: Tuesday, June 15, 2021

Time: 1:00 p.m.–3:00 p.m. EDT

WebEx meeting number (access code): 199 934 1084

WebEx meeting password: W3sJBcHyg43

Join by phone: +1-415-527-5035, 1999341084## US Toll

IWG-3—Meeting 2

Date: Wednesday, July 7, 2021

Time: 1:00 p.m.–3:00 p.m. EDT

WebEx meeting number (access code): 199 584 9300

WebEx meeting password: gMux6vWM9X2

Join by phone: +1-415-527-5035, 1995849300## US Toll

IWG-3—Meeting 3

Date: Thursday, July 29, 2021

Time: 1:00 p.m.–3:00 p.m. EDT

WebEx meeting number (access code): 199 890 4299

WebEx meeting password: BrR373E6wat

Join by phone: +1-415-527-5035, 1998904299## US Toll

Informal Working Group 4: Regulatory Issues

Contacts

Chair—David Goldman, david.goldman@spacex.com, telephone: (202) 649-2641

Vice Chair—Giselle Creaser, giselle.creaser@intelsat.com, telephone: (703) 559-7851

FCC Representatives

Dante Ibarra, dante.ibarra@fcc.gov, telephone: (202) 418-0610

Clay DeCell, clay.decell@fcc.gov, telephone: (202) 418-0803

IWG-4—Meeting 1

Date: Tuesday, June 15, 2021

Time: 11:00 a.m.–1:00 p.m. EDT

WebEx meeting number (access code): 199 387 8034

WebEx meeting password:

7XxpquA9Vn8

Join by phone: +1-415-527-5035, 1993878034## US Toll

IWG-4—Meeting 2

Date: Wednesday, July 7, 2021

Time: 11:00 a.m.–1:00 p.m. EDT

WebEx meeting number (access code): 199 904 4998

WebEx meeting password: 3xiXuXE9Mb5

Join by phone: +1-415-527-5035, 1999044998## US Toll

IWG-4—Meeting 3

Date: Thursday, July 29, 2021

Time: 11:00 a.m.–1:00 p.m. EDT

WebEx meeting number (access code): 199 428 4773

WebEx meeting password: 3MCnidWpa46

Join by phone: +1-415-527-5035, 1994284773## US Toll

Federal Communications Commission.

Troy Tanner,

Deputy Chief, International Bureau.

[FR Doc. 2021-12071 Filed 6-8-21; 8:45 am]

BILLING CODE 6712-01-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)). If the proposal also involves the acquisition of a nonbanking company, the review also includes

whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843), and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 9, 2021.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23219. Comments can also be sent electronically to or Comments.applications@rich.frb.org:

1. *VCC Social Enterprises, Richmond, Virginia*; to become a bank holding company by acquiring VCC Bank, Richmond, Virginia, and also acquire Virginia Community Capital, Locus Capital, Locus Impact Investing, and Locus Foundation, all of Richmond, Virginia, and thereby engage in extending credit and servicing loans, asset management activities, management consulting, community development activities, financing and investment activities, and data processing activities pursuant to section 225.28(b)(1), (b)(2)(vi), (b)(9)(i)(A), 225.28(b)(12)(i), and (b)(14)(i) the Board's Regulation Y, respectively.

Board of Governors of the Federal Reserve System, June 4, 2021.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021-12084 Filed 6-8-21; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Recordkeeping Provisions Associated with Stress Testing Guidance (FR 4202; OMB No. 7100-0348). The Board has extended the FR 4202 without revision to ensure compliance with the Paperwork Reduction Act (PRA). However, whether and how any changes should be made to the guidance in light

of recent amendments made by the Board to its stress testing rules is under consideration. The Board will publish any proposed changes to the FR 4202 via a separate notice for comment.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghribi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Recordkeeping Provisions Associated with Stress Testing Guidance.

Agency form number: FR 4202.

OMB control number: 7100-0348.

Frequency: As needed.

Respondents: Banking organizations.

Estimated number of respondents: 100.

Estimated average hours per response: 180.

Estimated annual burden hours: 18,000.

General description of report: On May 17, 2012, the Board published the Supervisory Guidance on Stress Testing for Banking Organizations With More Than \$10 Billion in Total Consolidated Assets (Stress Testing Guidance) in the

Federal Register.¹ The Stress Testing Guidance outlines high-level principles for stress testing practices applicable to all Board-supervised banking organizations with more than \$10 billion in total consolidated assets.²

The Stress Testing Guidance recommends that banking organizations (i) have a stress testing framework that includes clearly defined objectives, well-designed scenarios tailored to the banking organization's business and risks, well-documented assumptions, conceptually sound methodologies to assess potential impact on the banking organization's financial condition, informative management reports, and recommended actions based on stress test results; and (ii) have policies and procedures for a stress testing framework. These recordkeeping activities are collections of information under the PRA.

An organization should have written policies, approved and annually reviewed by the board, that direct and govern the implementation of the stress testing framework in a comprehensive manner. Policies, along with procedures to implement them, should:

- Describe the overall purpose of stress testing activities;
- articulate consistent and sufficiently rigorous stress testing practices across the entire organization;
- indicate stress testing roles and responsibilities, including controls over external resources used for any part of stress testing (such as vendors and data providers);
- describe the frequency and priority with which stress testing activities should be conducted;
- indicate how stress test results are used and by whom, and
- be reviewed and updated as necessary to ensure that stress testing practices remain appropriate and keep up to date with changes in market conditions, organization products and strategies, organization exposures and activities, the organization's established risk appetite, and industry stress testing practices.

Legal authorization and confidentiality: This voluntary information collection is authorized pursuant to section 11 of the Federal Reserve Act, 12 U.S.C. 248 (state member banks); sections 25 and 25A of

¹ 77 FR 29458. The Stress Testing Guidance was issued jointly by the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

² Board-supervised banking organizations include state member banks, bank holding companies, savings and loan holding companies, and all other institutions for which the Board is the primary federal supervisor.

the Federal Reserve Act, 12 U.S.C. 602 and 625 (Edge and Agreement corporations); section 5 of the Bank Holding Company Act of 1956, 12 U.S.C. 1844 (bank holding companies) and, in conjunction with section 8 of the International Banking Act, 12 U.S.C. 3106 (foreign banking organizations); section 7(c) of the International Banking Act of 1978, 12 U.S.C. 3105(c) (branches and agencies of foreign banks); section 10 of the Home Owners' Loan Act, 12 U.S.C. 1467a, (savings and loan holding companies), and section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5365 (nonbank financial companies supervised by the Board).

Because the collections of information associated with the FR 4202 do not involve the submission of information to the Board, no issues of confidentiality would normally arise. To the extent that the Board collects such information during an examination of the banking organization, confidential treatment may be afforded to that information under exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)), which protects information collected as part of the Board's supervisory process. Additionally, individual respondents may request confidential treatment of information pursuant to exemption 4 of the FOIA (5 U.S.C. 552(b)(4)), which protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." The Board will treat such information as confidential to the extent permitted by law, including the FOIA.

Current actions: On March 8, 2021, the Board published an initial notice in the **Federal Register** (86 FR 13378) requesting public comment for 60 days on the extension, without revision, of the FR 4202. The comment period for this notice expired on May 7, 2021. The Board did not receive any comments. The Board will adopt the extension, without revision, of the FR 4202 as originally proposed.

Board of Governors of the Federal Reserve System, June 4, 2021.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021-12086 Filed 6-8-21; 8:45 am]

BILLING CODE 6210-01-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 9, 2021.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Manager) P.O. Box 442, St. Louis, Missouri 63166-2034.

Comments can also be sent electronically to

Comments.applications@stls.frb.org:

1. *First State Capital Corporation, Holly Springs, Mississippi*; to merge with M&F Bancorp, Inc., and thereby indirectly acquire Merchant and Farmers Bank, both of Holly Springs, Mississippi.

Board of Governors of the Federal Reserve System, June 4, 2021.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021-12083 Filed 6-8-21; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for

three years, without revision, the Basel II Interagency Pillar 2 Supervisory Guidance (FR 4199; OMB No. 7100-0320).

DATES: Comments must be submitted on or before August 9, 2021.

ADDRESSES: You may submit comments, identified by FR 4199 by any of the following methods:

- **Agency Website:** <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- **Email:** regs.comments@federalreserve.gov. Include the OMB number in the subject line of the message.

- **Fax:** (202) 452-3819 or (202) 452-3102.

- **Mail:** Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to

collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be available at <https://www.reginfo.gov/public/do/PRAMain>, if approved. These documents will also be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Basel II Interagency Pillar 2 Supervisory Guidance.

Agency form number: FR 4199.

OMB control number: 7100-0320.

Frequency: As needed.

Respondents: State member banks and bank holding companies (BHCs) that use the advanced approaches framework.

Estimated number of respondents: 15.

Estimated average hours per response: 420.

Estimated annual burden hours: 6,300.

General description of report: The Pillar 2 Guidance is intended to assist banking organizations that are subject to the Basel II advanced approaches capital adequacy framework (advanced approaches framework) in applying that framework. Advanced approaches banking organizations are required to use an internal ratings-based approach to calculate regulatory credit risk capital requirements and advanced measurement approaches to calculate regulatory operational risk capital requirements. Banking organizations are required to meet certain qualification requirements before they can use the advanced approaches framework for risk-based capital purposes. The Pillar 2 Guidance sets the expectation that such organizations maintain certain documentation as described in paragraphs 37, 41, 43, and 46 of this portion of the guidance.

Legal authorization and confidentiality: The collection of information is authorized pursuant to sections 9 and 11 of the Federal Reserve Act, section 5 of the Bank Holding Company Act of 1956, and section 161 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The FR 4199 is voluntary.

Because the collections of information associated with the guidance is maintained by each institution, the Freedom of Information Act (FOIA) would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of the examination or supervision of a financial institution, this information would be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in "examination, operating, or condition reports" obtained in the bank supervisory process. In addition, the information may also be kept confidential under exemption 4 of the FOIA, which protects trade secrets and commercial or financial information obtained from a person that is both customarily and actually treated as private by the respondent.

Consultation outside the agency: The Board has consulted with the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency and confirmed that there will

be no revisions to the guidance, and no revision to the time per response estimates.

Board of Governors of the Federal Reserve System, June 4, 2021.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021-12087 Filed 6-8-21; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the International Applications and Prior Notifications under Subpart B of Regulation K (FR K-2; OMB No. 7100-0284).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: The International Applications and Prior Notifications under Subpart B of Regulation K.

Agency form number: FR K-2.

OMB control number: 7100-0284.

Frequency: On occasion.

Respondents: Foreign banks.

Estimated number of respondents: 13.

Estimated average hours per response: Reporting: 35; Disclosure: 1.

Estimated annual burden hours: Reporting: 455; Disclosure: 13.

General description of report: Under the International Banking Act of 1978 (IBA), foreign banks are required to obtain the prior approval of the Board to establish a branch, agency, or representative office; to establish or acquire ownership or control of a commercial lending company in the United States; or to change the status of an agency or limited branch to a branch in the United States. The Board uses the information from the FR K-2 in connection with these applications and to supervise foreign banks with offices¹ in the United States.

Legal authorization and confidentiality: The FR K-2 is authorized pursuant to sections 7, 10, and 13 of the International Banking Act.² The applications and notifications comprising FR K-2 are required to obtain a benefit.

The Board does not routinely publicly release information collected through the FR K-2. To the extent a respondent submits nonpublic commercial or financial information in connection with the FR K-2, which is both customarily and actually treated as private by the respondent, the respondent may request confidential treatment pursuant to exemption 4 of the Freedom of Information Act (FOIA).³ To the extent a respondent submits personal, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of privacy, the respondent may request confidential treatment pursuant to exemption 6 of the FOIA.⁴ If a respondent requests confidential treatment, the Board will determine whether the information is entitled to confidential treatment on a case-by-case basis. The entity should separately designate any such information as

“confidential commercial information” or “confidential financial information” and the Board will treat such designated information as confidential to the extent permitted by law, including the FOIA. To the extent a respondent submits information related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a financial supervisory agency, the information may be confidential pursuant to exemption 8 of the FOIA.⁵

Current actions: On March 8, 2021, the Board published an initial notice in the **Federal Register** (86 FR 13383) requesting public comment for 60 days on the extension, without revision, of the FR K-2. The comment period for this notice expired on May 7, 2021. The Board did not receive any comments. The Board will adopt the extension, without revision of the FR K-2 as originally proposed.

Board of Governors of the Federal Reserve System, June 4, 2021.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021-12088 Filed 6-8-21; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Application for a Foreign Organization to Acquire a U.S. Bank or Bank Holding Company (FR Y-3F; OMB No. 7100-0119).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghribi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to

collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Application for a Foreign Organization to Acquire a U.S. Bank or Bank Holding Company.

Agency form number: FR Y-3F.

OMB control number: 7100-0119.

Frequency: On occasion.

Respondents: Any company organized under the laws of a foreign country that seeks to acquire a U.S. bank or bank holding company.

Estimated number of respondents: 6.

Estimated average hours per response: Reporting: Initial application: 90; Subsequent application: 70; Disclosure: 1.

Estimated annual burden hours: Reporting: Initial application: 90; Subsequent application: 350; Disclosure: 6.

General description of report: Under the Bank Holding Company Act (BHC Act), any company, including a company organized under the laws of a foreign country, that seeks to acquire a U.S. bank or bank holding company must receive prior approval from the Board to do so. The Federal Reserve uses the information collected by the FR Y-3F to determine whether to approve the application and, subsequently, to carry out its supervisory responsibilities with respect to the foreign banking organization's operations in the United States.

Legal authorization and confidentiality: Section 3(a) of the BHC Act¹ requires prior approval by the Board for any company, including a foreign company, to acquire a U.S. bank or bank holding company, and section 3(c) of the BHC Act² sets forth the factors that the Board must consider in approving such an application. Sections

¹ The term “office” means any branch, agency, or representative office, or a commercial lending company subsidiary.

² 12 U.S.C. 3105, 3107, and 3108.

³ 5 U.S.C. 552(b)(4).

⁴ 5 U.S.C. 552(b)(6).

⁵ 5 U.S.C. 552(b)(8).

¹ 12 U.S.C. 1842(a).

² 12 U.S.C. 1842(c).

5(a) through 5(c) of the BHC Act³ authorize the Board to require the registration of bank holding companies, issue regulations and orders to carry out its supervisory responsibilities thereunder, and examine and require reports to be submitted by bank holding companies, respectively. Together, these sections of the BHC Act provide the legal authorization for the FR Y–3F. The FR Y–3F is required to obtain a benefit.

To the extent a respondent submits nonpublic commercial or financial information in connection with the FR Y–3F, which is both customarily and actually treated as private by the respondent, the respondent may request confidential treatment pursuant to exemption 4 of the Freedom of Information Act (FOIA).⁴ To the extent a respondent submits personal, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of privacy, the respondent may request confidential treatment pursuant to exemption 6 of the FOIA.⁵ If a respondent requests confidential treatment, the Board will determine whether the information is entitled to confidential treatment on a case-by-case basis. The entity should separately designate any such information as “confidential commercial information” or “confidential financial information” and the Board will treat such designated information as confidential to the extent permitted by law, including the FOIA. To the extent a respondent submits information related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a financial supervisory agency, the information may be treated as confidential pursuant to exemption 8 of the FOIA.⁶

Current actions: On March 8, 2021, the Board published an initial notice in the **Federal Register** (86 FR 13381) requesting public comment for 60 days on the extension, without revision, of the FR Y–3F. The comment period for this notice expired on May 7, 2021. The Board did not receive any comments. The Board will adopt the extension, without revision of the FR K–2 as originally proposed.

Board of Governors of the Federal Reserve System, June 4, 2021.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021–12089 Filed 6–8–21; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Recordkeeping Requirements Associated with Changes in Foreign Investments (Made Pursuant to Regulation K) (FR 2064; OMB No. 7100–0109).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrahi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board’s public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Recordkeeping Requirements Associated with Changes in Foreign Investments (Made Pursuant to Regulation K).

Agency form number: FR 2064.

OMB control number: 7100–0109.

Frequency: On occasion.

Respondents: Internationally active U.S. banking organizations (member

banks, Edge Act and agreement corporations, and bank holding companies).

Estimated number of respondents: 20.

Estimated average hours per response: 2.

Estimated annual burden hours: 160.

General description of report: This collection concerns internal records that internationally active U.S. banking organizations (such as internationally active member banks, Edge Act and agreement corporations, and bank holding companies) should maintain to demonstrate compliance with the investment provisions contained in Subpart A of Regulation K—International Banking Operations.

Legal authorization and confidentiality: The FR 2064 is authorized pursuant to section 5(c) of the Bank Holding Company Act;¹ and sections 25(7) and 25A(17) of the Federal Reserve Act.² The institutions’ obligation to retain the records is mandatory.

The records related to the FR 2064 are retained at banking organizations. However, in the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the Freedom of Information Act (FOIA), which protects information contained in “examination, operating, or condition reports” obtained in the bank supervisory process.³ Additionally, to the extent that such information obtained by the Board constitutes nonpublic commercial or financial information, which is both customarily and actually treated as private by the financial institution, the financial institution may request confidential treatment pursuant to exemption 4 of the FOIA.⁴

Current actions: On February 17, 2021, the Board published an initial notice in the **Federal Register** (86 FR 9938) requesting public comment for 60 days on the extension, without revision, of the FR 2064. The comment period for this notice expired on April 19, 2021. The Board did not receive any comments. The Board will adopt the extension, without revision, of the FR 2064 as originally proposed.

¹ 12 U.S.C. 1844(c).

² 12 U.S.C. 602 and 625.

³ 5 U.S.C. 552(b)(8).

⁴ 5 U.S.C. 552(b)(4).

³ 12 U.S.C. 1844(a)–(c).

⁴ 5 U.S.C. 552(b)(4).

⁵ 5 U.S.C. 552(b)(6).

⁶ 5 U.S.C. 552(b)(8).

Board of Governors of the Federal Reserve System, June 4, 2021.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021-12090 Filed 6-8-21; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than June 24, 2021.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Heather Cook, Ames, Iowa*; to join the Simington Family Group, a group acting in concert, to retain voting shares of Fostoria Bankshares, Inc., and thereby indirectly retain voting shares of Farmers Savings Bank, both of Fostoria, Iowa.

Board of Governors of the Federal Reserve System, June 4, 2021.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021-12085 Filed 6-8-21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-1984-14]

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 9, 2021**.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

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:* Reinstatement without of change of a previously approved collection; *Title of Information Collection:* Hospice Facility Cost Report Form; *Use:* Under the authority of §§ 1815(a) and 1833(e) of the Social Security Act (the Act), CMS requires that providers of services participating in the Medicare program submit information to determine costs for health care services rendered to Medicare beneficiaries. CMS requires that providers follow reasonable cost principles under 1861(v)(1)(A) of the Act when completing the Medicare cost report (MCR). The regulations at 42 CFR 413.20 and 413.24 require that providers submit acceptable cost reports on an annual basis and maintain sufficient financial records and statistical data, capable of verification by qualified auditors. In addition, regulations require that providers furnish such Information to the contractor as may be necessary to assure proper payment by the program, receive program payments, and satisfy program overpayment determinations.

CMS regulations at 42 CFR 413.24(f)(4) require that each hospice submit an annual cost report to their contractor in a standard American Standard Code for Information Interchange (ASCII) electronic cost report (ECR) format. A hospice submits the ECR file to contractors using a compact disk (CD), flash drive, or the CMS approved Medicare Cost Report E-filing (MCREF) portal, [URL: <https://mcref.cms.gov>]. The instructions for

submission are included in the hospice cost report instructions on page 43–3.

CMS requires the Form CMS–1984–14 to determine a hospice’s reasonable costs incurred in furnishing medical services to Medicare beneficiaries. CMS uses the Form CMS–1984–14 for rate setting; payment refinement activities, including developing a market basket; Medicare Trust Fund projections; and program operations support. Additionally, the Medicare Payment Advisory Commission (MedPAC) uses the hospice cost report data to calculate Medicare margins (a measure of the relationship between Medicare’s payments and providers’ Medicare costs) and analyze data to formulate Medicare Program recommendations to Congress. *Form Number:* CMS–1984–14 (OMB control number: 0938–0758); *Frequency:* Yearly; *Affected Public:* Private Sector, Business or other for-profits, Not for profits institutions; *Number of Respondents:* 4,379; *Total Annual Responses:* 4,379; *Total Annual Hours:* 823,252. (For policy questions regarding this collection contact Duncan Gail at 410–786–7278.)

Dated: June 3, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–12010 Filed 6–8–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; “State SNAP Agency NDNH Matching Program Performance Report” (OMB No.: 0970–0464)

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF) is requesting the federal Office of Management and Budget (OMB) approve the “State SNAP Agency NDNH Matching Program Performance Report,” with minor revisions, for an additional three years. State agencies administering their Supplemental Nutrition Assistance Program (SNAP) provide the annual performance report to OCSE in accordance with the computer matching agreement between state SNAP agencies and OCSE. The current OMB approval expires on February 28, 2022.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: To submit comments and obtain copies of the proposed collection

of information, email infocollection@acf.hhs.gov. Alternatively, copies are obtainable by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. Identify all requests, emailed or written, by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: State agencies administering SNAP are mandated to participate in a computer matching program with the federal OCSE. The matching program compares SNAP applicant and recipient information with employment and wage information maintained in the National Directory of New Hires (NDNH). The outcomes of the compared information help state SNAP agencies with verifying and determining an individual’s benefit eligibility. To receive NDNH information, state agencies enter into a computer matching agreement and adhere to its terms and conditions, including providing OCSE with annual performance outcomes that are attributable to the use of NDNH information.

To fulfill OMB requirements, OCSE periodically reports performance measurements demonstrating how the use of information in the NDNH supports OCSE’s strategic mission, goals, and objectives. OCSE will provide the annual SNAP performance outcomes to OMB.

Respondents: State SNAP Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
SNAP Agency Performance Reporting Tool and Instructions	53	1	0.83	43.99

Estimated Total Annual Burden Hours: 43.99.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology. OCSE will consider comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 653(j)(10); 5 U.S.C. 552a; and Pub. L. 111–352.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–12057 Filed 6–8–21; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Evaluation of the Family Unification Program—Extension (OMB #0970–0514)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) at the U.S. Department of Health and Human

Services (HHS) requests an extension to continue data collection for the Evaluation of the Family Unification Program (FUP) (OMB #0970–0514). Information collection activities requested include interviews, focus group discussions, program data, and administrative data collection.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing OPREinfocollection@acf.hhs.gov. Alternatively, copies can also be

obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The ACF, Office of Planning, Research, and Evaluation (OPRE) requests public comment on a proposed extension to a currently approved information collection for the Evaluation of FUP. The approved instruments, supporting statements, and attachments are available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202009-0970-004. No changes are proposed.

Activities include site visits to each program to speak with program leaders,

partners and key stakeholders, front-line staff, and participants as well as program and administrative data collection. The evaluation will contribute to understanding the effects of FUP on project participants' child welfare involvement. This evaluation is part of a larger project to help ACF build the evidence base in child welfare through rigorous evaluation of programs, practices, and policies. The Department of Housing and Urban Development (HUD) funds and administers FUP. The study will also contribute to HUD's understanding of how housing can serve as a platform for improving quality of life.

Respondents: Public housing authority staff, public child welfare agency staff, other services provider staff, and child welfare-involved families.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Guide for Implementation Study for PCWA Management ..	2	1	1.00	2.00	1
Guide for Implementation Study for PHA Management	2	1	1.00	2.00	1
Guide for Implementation Study for CoC Management	2	1	1.00	2.00	1
Guide for Implementation Study for Referral Provider Administrators	2	1	1.00	2.00	1
Guide for Implementation Study with PCWA FUP Management (Second)	2	1	1.00	2.00	1
Guide for Implementation Study for PHA FUP Management	2	1	1.00	2.00	1
Guide for Implementation Study Focus Groups with PHA Frontline Workers	6	1	1.50	9.00	3
Guide for Implementation Study for Parents (Second, Third)	72	1	1.50	108	36
Guide for Implementation Study Focus Groups with Frontline Workers	180	1	1.50	270	90
Guide for Implementation Study for PCWA FUP Management (Third)	6	1	1.00	6.00	2
Guide for Implementation Study for Service Provider Management	5	1	1.00	5.00	2
Housing Status Form	185	31	0.04	230	77
Referral Form	60	10	0.17	102	34
Randomization Tool	3	200	0.02	12	4
Housing Assistance Questionnaire	120	3	0.09	33	11
Ongoing Services Questionnaire	120	3	0.09	33	11
Dashboard	12	27	0.17	56	19
Administrative Data List	18	2	5.00	180	60

Estimated Total Annual Burden Hours: 355.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility,

and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 676.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–12074 Filed 6–8–21; 8:45 am]

BILLING CODE 4184–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung and Blood Institute; 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: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Patient-Oriented Research Study Section.

Date: July 15–16, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Stephanie Johnson Webb, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–V, Bethesda, MD 20892, (301) 827–7992, stephanie.webb@nih.gov.

(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: Jun 4, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–12091 Filed 6–8–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; 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 Center for Advancing Translational Sciences Special Emphasis Panel; Rare Disease.

Date: July 7, 2021.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alomit Ishai, Ph.D., Scientific Review Officer, Office of Grants Management and Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, MD 20892, 301–827–5819, alomit.ishai@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: June 4, 2021.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–12094 Filed 6–8–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Pathophysiology of Illness in Septic Older Adults.

Date: June 23, 2021.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Isis S. Mikhail, MD, MPH, DrPH, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, Tel: 301–402–7704, mikhaili@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 3, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–12030 Filed 6–8–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Revision to the Coordinating Center for Type 1 Diabetes TrialNet (U01 Clinical Trial Required).

Date: July 15, 2021.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy

Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7119, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, 301-594-2242, jerkinsa@nidk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 3, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-12033 Filed 6-8-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Maximizing Investigators' Research Award B Study Section.

Date: July 1-2, 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: Sudha Veeraraghavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7846, Bethesda, MD 20892, (301) 827-5263, sudha.veeraraghavan@nih.gov.

Information is also available on the Institute's/Center's home page: <https://public.csr.nih.gov/StudySections/DBIB/BCMB>, where an agenda and any additional information for the meeting will be posted when available.

(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: June 3, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-12027 Filed 6-8-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Child Psychopathology and Developmental Disabilities Study Section, June 17, 2021, 09:00 a.m. to June 18, 2021, 08:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on May 20, 2021, 86 FR 27459. Kirk Thompson, Ph.D., Kirk.Thompson@nih.gov, (240) 498-9897, will be the new Contact person, replacing Katherine Morasch as Scientific Review Officer. The meeting date and location remain the same. The meeting is closed to the public.

Dated: June 3, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-12028 Filed 6-8-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; 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 Center for Advancing Translational Sciences Special Emphasis Panel; Multi-Disciplinary Machine-assisted, Genomic Analysis and Clinical Approaches to Shortening the Rare Diseases Diagnostic Odyssey (UG3/UH3 Clinical Trial Optional).

Date: July 14, 2021.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1037, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nakia C. Brown, Ph.D., Scientific Review Officer, Office of Grants Management and Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1037, Bethesda, MD 20892, 301-827-4905, brownnac@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: June 4, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-12093 Filed 6-8-21; 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 National Asthma Education Prevention Program Coordinating Committee.

The meeting will be open to the public, with attendance limited to space available. 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: National Asthma Education Prevention Program Coordinating Committee.

Date: July 9, 2021.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and discuss asthma guidelines and implementation; updates on current and future activities. Discussion on programmatic updates.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Virtual Access: Please visit the link below to join the webinar: <https://nih.zoomgov.com/j/1611655505?pwd=RjBSc0xqbTl0S003eVYxa011eTU1Zz09>. Event Passcode: 576619. Call-in: 1-669-254-5252 or 1-646-828-7666. Webinar ID: 161 165 5505. Passcode: 576619. International numbers available: <https://nih.zoomgov.com/u/avaNgcx8v>.

Contact Person: Susan T. Shero, R.N., M.S., Executive Secretary, National Asthma Education and Prevention Program Coordinating Committee, National Heart, Lung and Blood Institute, 6075 Rockledge Drive, Suite 6197, Bethesda, MD 20892, 301-496-1051, Susan.shero@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: <https://www.nhlbi.nih.gov/advisory-and-peer-review-committees/national-asthma-education-and-prevention-program-coordinating>, 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: June 4, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-12092 Filed 6-8-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket Number USCG-2021-0238]

Consolidation of Redundant Coast Guard Boat Stations

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: We are requesting your comments on the planned consolidation of redundant Coast Guard boat stations. Many stations were established at a time when boats lacked engines and were powered by oars and paddles. With modern boat operating speeds and improved direction finding technology, many calls for Coast Guard assistance can be responded to by multiple units significantly faster than when these boat

stations were first established. The combination of significantly improved response times, along with an overall reduction in rescue calls due to boating safety improvements throughout the nation, has resulted in a number of boat stations becoming redundant. This consolidation will result in a more robust response system by increasing staffing levels and capacity at select nearby boat stations. Such a consolidation creates synergy and more opportunities for boat operators to properly train instead of missing training opportunities while standing ready to respond to calls that do not come.

DATES: Written comments and related material may be submitted to the Coast Guard personnel specified below. Your comments and related material must reach the Coast Guard on or before August 3, 2021.

ADDRESSES: You may submit comments identified by docket number USCG-2021-0238 using the Federal rulemaking portal at <https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document, please call or email Todd Aikins, Coast Guard Office of Boat Forces, 202-372-2463, todd.r.aikins@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
GAO Government Accountability Office

II. Background and Purpose

In October of 2017, the GAO issued report GAO-18-9, titled "Actions Needed to Close Stations Identified as Overlapping and Unnecessarily Duplicative." This GAO report, a copy of which is in the docket for this notice, recommends the consolidation of 18 boat stations. Due to environmental and operational factors, the Coast Guard is not considering all 18 boat stations identified in the GAO report for consolidation this year. Instead, we anticipate consolidating four stations, with implementation notionally scheduled for fiscal year 2022. These stations have been identified because there are other units nearby capable of responding to cases in these areas, and because these four stations respond to a low number of cases. We do not anticipate any adverse effect on Coast Guard response capability. We expect

enhanced proficiency of boat operators as well as a less complicated response system.

III. Discussion

The following seasonal stations, Stations-Small Scituate, MA; Holland, MI; North Superior, MN; and Beach Haven, NJ; have been identified for consolidation with neighboring stations. These are seasonal stations are detached subunits of larger parent stations.

This consolidation is expected to result in a more robust response system by increasing staffing levels and capacity at select nearby boat stations. Such a consolidation creates synergy and more opportunities for boat operators to properly train.

IV. Public Participation and Request for Comments

We encourage you to submit comments through the Federal portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. In your submission, please include the docket number for this notice and provide a reason for each suggestion or recommendation. We will review all comments received, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this notice as being available in the docket, and public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions.

John W. Mauger,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Capability.

[FR Doc. 2021-12105 Filed 6-8-21; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

[Docket No. FWS-R7-ES-2020-0132;
FXES111607MRG01-212-FF07CMM00]

Marine Mammals; Incidental Take During Specified Activities; Proposed Incidental Harassment Authorization for Southeast Alaska Stock of Northern Sea Otters in the Queen Charlotte Fault Region, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application; proposed incidental harassment authorization; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, in response to a request under the Marine Mammal Protection Act of 1972, as amended, from the National Science Foundation and the Lamont-Doherty Earth Observatory, propose to authorize nonlethal, incidental take by harassment of small numbers of the Southeast Alaska stock of northern sea otters between July 1, 2021, and August 31, 2021. The applicants have requested this authorization for take that may result from high-energy seismic surveys in the Queen Charlotte Fault region of Southeast Alaska. Seismic surveys are being conducted to characterize crustal and uppermost mantle velocity structure, fault zone architecture and rheology, and seismicity in the Queen Charlotte Fault. We estimate that this project may result in the nonlethal incidental take of up to 27 northern sea otters from the Southeast Alaska stock. This proposed authorization, if finalized, will be for up to 49 takes of 27 northern sea otters by Level B harassment only. No injury or mortality is expected or will be authorized.

DATES: Comments on the proposed incidental harassment authorization and draft environmental assessment must be received by July 9, 2021.

ADDRESSES: *Document availability:* You may view this proposed authorization, the application package, supporting information, and the lists of references cited herein at <http://www.regulations.gov> under Docket No. FWS-R7-ES-2020-0132, or these documents may be requested as described under **FOR FURTHER INFORMATION CONTACT**.

Comment submission: You may submit comments on this proposed authorization by one of the following methods:

- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS-R7-ES-2020-0132, U.S. Fish and Wildlife

Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, Virginia 22041–3803.

- *Electronic submission:* Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R7-ES-2020-0132. 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, MS-341, 1011 East Tudor Road, Anchorage, Alaska, 99503, by email at R7mmmregulatory@fws.gov; or by telephone at 1-800-362-5148. 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:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972 (MMPA; 16 U.S.C. 1361, *et seq.*), authorizes the Secretary of the Interior (Secretary) to allow, upon request, the incidental but not intentional taking of small numbers of marine mammals of a species or population stock by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified region during a period of not more than one year. Incidental take may be authorized only if statutory and regulatory procedures are followed and the U.S. Fish and Wildlife Service (hereafter, “the Service” or “we”) makes the following findings: (i) Take is of a small number of marine mammals of a species or population stock, (ii) take will have a negligible impact on the species or stock, and (iii) take will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses by coastal-dwelling Alaska Natives.

The term “take,” as defined by the MMPA, means to harass, hunt, capture, or kill, or to attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362(13)). Harassment, as defined by the MMPA, means any act of pursuit, torment, or annoyance that (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”).

The terms “negligible impact,” “small numbers,” and “unmitigable adverse impact” are defined in the Code of Federal Regulations at 50 CFR 18.27, the Service’s regulations governing take of small numbers of marine mammals incidental to specified activities. “Negligible impact” is defined as 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. “Small numbers” is defined as a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock. However, we do not rely on that definition, as it conflates the terms “small numbers” and “negligible impact,” which we recognize as two separate and distinct requirements (see *Natural Res. Def. Council, Inc. v. Evans*, 232 F. Supp. 2d 1003, 1025 (N.D. Cal. 2003)). Instead, in our small numbers determination, we evaluate whether the number of marine mammals likely to be taken is small relative to the size of the overall population. “Unmitigable adverse impact” is defined as 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.

If the requisite findings are made, we will issue an Incidental Harassment Authorization (IHA), which sets forth the following: (i) Permissible methods of taking; (ii) other means of effecting the least practicable impact on marine mammals and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of marine mammals for taking for subsistence uses by coastal-dwelling Alaska Natives; and (iii) requirements for monitoring and reporting take.

Summary of Request

On December 2, 2019, the National Science Foundation and Lamont-Doherty Earth Observatory (hereafter

“NSF/L-DEO” or “the applicant”) submitted a request to the Service’s Marine Mammals Management Office (MMM) for authorization to take by Level B harassment a small number of northern sea otters (*Enhydra lutris kenyoni*, hereafter “sea otters” or “otters” unless another species is specified) from the Southeast Alaska stock. NSF/L-DEO expects that take by unintentional harassment may occur during their planned high-energy marine seismic surveys at the Queen Charlotte Fault (QCF) in the Northeast Pacific Ocean within the U.S. Exclusive Economic Zone (EEZ).

Description of Specified Activities and Geographic Region

The specified activity (the “project”) consists of Lamont-Doherty Earth Observatory’s (L-DEO) 2021 Marine Geophysical Surveys by the Research Vessel (R/V) *Marcus G. Langseth* (Langseth) of the QCF in the Northeast Pacific Ocean from July 1, 2021, to August 31, 2021. High-energy two-dimensional (2-D) seismic surveys will be used to characterize crustal and uppermost mantle velocity structure, fault zone architecture and rheology, and seismicity of the QCF. The 2-D seismic surveys will be conducted along transect lines within the area of 52–57° N and 131–137° W (Figure 1). Some deviation in actual transects, including order of survey operations, could be necessary due to poor data quality, inclement weather, or mechanical issues with the research vessel or equipment. The surveys are proposed to occur within the EEZs of the United States and Canada, including U.S. Federal Waters, State of Alaska Waters, and

Canadian Territorial Waters ranging from 50 to 2,800 meters (m; 164 to 9,186 feet (ft)) in depth. The Service cannot and is not authorizing the incidental take of marine mammals in waters not under the jurisdiction of the United States. Therefore, the Service’s calculation of estimated incidental take is limited to the specified activity occurring in United States jurisdictional waters within the stock’s range. The proposed surveys are anticipated to last for 36 days, including approximately 27 days of seismic operations, approximately 2 days of transit to and from the survey area, 3 days for equipment deployment/recovery, and 4 days of contingency. The R/V *Langseth* will likely leave out of and return to the port of Ketchikan, AK, during summer 2021.

The R/V *Langseth* will tow 4 strings containing an array of 36 airguns at a depth of 12 m (39 ft), creating a discharge volume of approximately 0.11 cubic meter (m³; 6,600 cubic inches (in³)). The peak sound pressure 1 m (3.2 ft) from the center of the airgun array is 258.6 decibels (Tolstoy *et al.* 2009). Noise levels herein are given in decibels (dB) referenced to 1 μ Pa (dB re: 1 μ Pa) for underwater sound. All dB levels are dB_{RMS} (root-mean-squared dB level) unless otherwise noted; dB_{RMS} refers to the square root of the average of the squared sound pressure level typically measured over 1 second. Other important metrics include the sound exposure level (SEL; represented as dB re: 1 μ Pa²-s), which represents the total energy contained within a pulse and considers both intensity and duration of exposure, and the peak sound pressure (also referred to as the zero-to-peak

sound pressure or 0–p). Peak sound pressure is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the dB_{RMS} sound pressure. See Richardson *et al.* (1995), Götz *et al.* (2009), Hopp *et al.* (2012), Navy (2014), for descriptions of acoustical terms and measurement units in the context of ecological impact assessment.

The seismic array produces broadband energy that ranges from a few hertz (Hz) to kilohertz (kHz). However, all but a small fraction of the energy is focused in the 10–300 Hz range (Tolstoy *et al.* 2009). The survey will also include the use of a single 655-cubic-centimeter (cm³; 40-in³) airgun that will be used when the full array is powered down.

The receiving system will consist of a 15-kilometer (km; 9.3-mile (mi)) hydrophone streamer and approximately 60 short-period and 28 broadband Ocean Bottom Seismometer (OBS) devices, which will be primarily deployed from a second vessel, the Canadian Coast Guard R/V *John P. Tully* (however, R/V *Langseth* may also deploy OBSs). The OBSs will be deployed at approximately 10-km (6.2-mi) intervals with 5-km (3.1 mi) spacing over the central 40 km (25 mi) of the fault zone. The OBSs have a height and diameter of 1 m (3.2 ft) and an 80-kilogram (176-pound) anchor.

Additional project details may be reviewed in the application materials available as described under **ADDRESSES** or may also be requested as described under **FOR FURTHER INFORMATION CONTACT**.

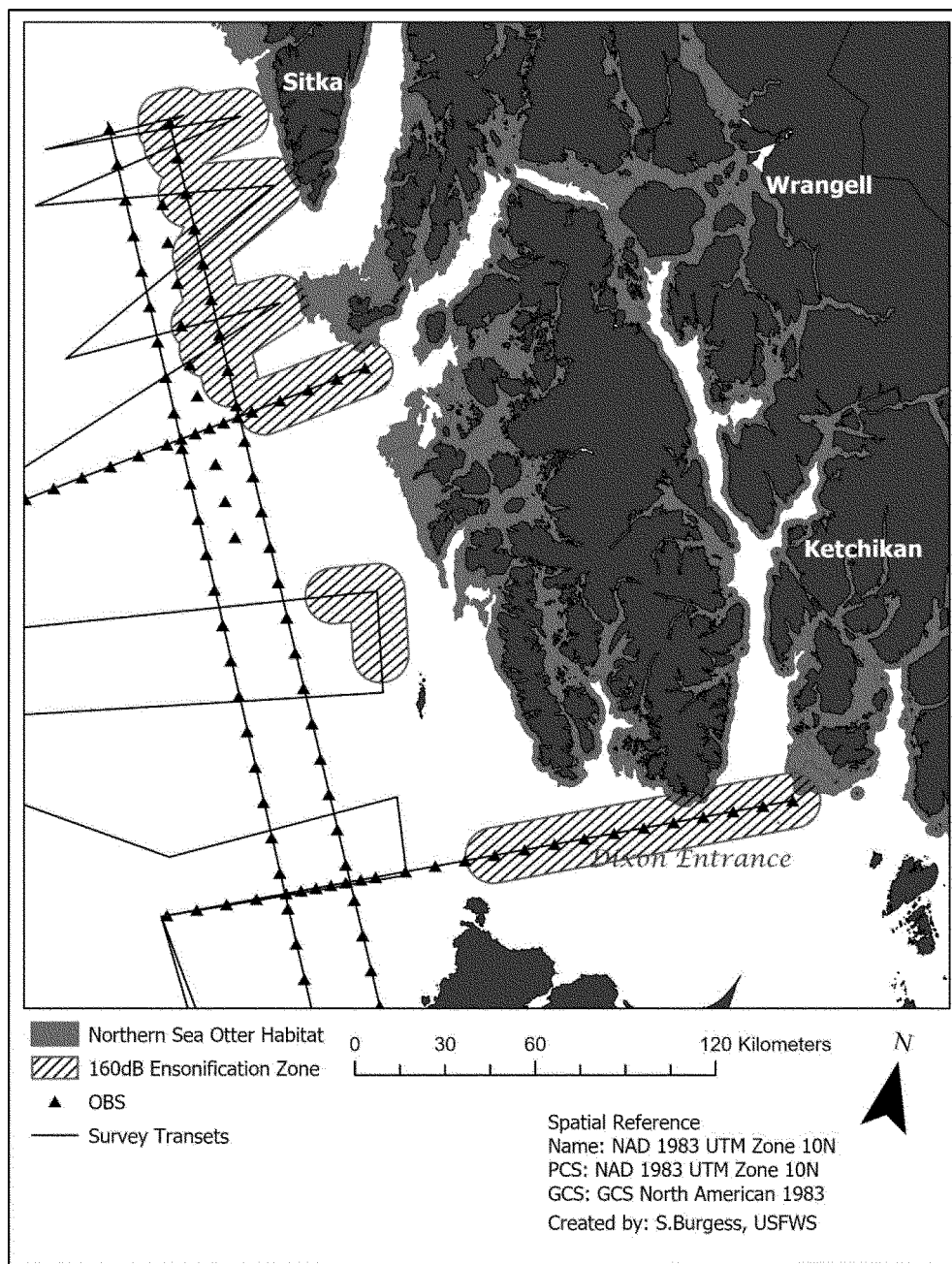


Figure 1. Specified geographic area for the National Science Foundation and Lamont-Doherty Earth Observatory seismic survey planned for summer 2021.

Description of Marine Mammals in the Specified Activity Area

The northern sea otter is the only marine mammal under the Service's jurisdiction that normally occupies the Northeast Pacific Ocean. Sea otters in Alaska are represented by three stocks. Those in the Northeast Pacific Ocean belong to the Southeast Alaska stock.

Two other stocks occur in Southcentral and Southwest Alaska. Detailed information about the biology of the Southeast Alaska stock can be found in the most recent stock assessment report (USFWS 2014), which can be found at: https://www.fws.gov/r7/fisheries/mmm/stock/Revised_April_2014_Southeast_Alaska_Sea_Otter_SAR.pdf.

Sea otters may be distributed anywhere within the specified project area other than upland areas; however, they generally occur in shallow water near the shoreline. They are most commonly observed within the 40-m (131-ft) depth contour (USFWS 2014), although they can be found in areas with deeper water. Ocean depth is

generally correlated with distance to shore, and sea otters typically remain within 1 to 2 km (0.62 to 1.24 mi) of shore (Riedman and Estes 1990). They tend to be found closer to shore during storms, but they venture farther out during good weather and calm seas (Lensink 1962; Kenyon 1969). In the 14 aerial surveys conducted from 1995 to 2012 in Southeast Alaska, 95 percent of otters were found in areas shallower than 40 m (131 ft) (Tinker *et al.* 2019). Areas important to mating for the Southeast Alaska stock include marine coastal regions containing adequate food resources within the 40-m (131-ft) depth contour.

The most recent estimate of the number of sea otters in the Southeast Alaska stock is 25,584 otters (standard error = 3,679; Tinker *et al.* 2019). The estimate was developed using a Bayesian hierarchical modeling framework based on survey and harvest count data. The survey data comprised results from 14 aerial surveys conducted in Southeast Alaska from 1995 to 2012, totaling more than 20,000 km (12,427 mi) of aerial transects. The Service conducted large-scale surveys in cooperation with the U.S. Geological Survey in 2003 and 2010 in southern Southeast Alaska (from Kake to Duke Island and Cape Chacon) and in 2002 and 2011 in northern Southeast Alaska (from Icy Point to Cape Ommaney). In these aerial surveys, transects were flown over high-density otter habitat (<40-m (131-ft) ocean depth) with a spacing of 2 km (1.2 mi) between transects and low-density otter habitat (40- to 100-m (131- to 328-ft) ocean depth) with a spacing of 8 km (5 mi) between transects.

Otter densities within the Southeast Alaska stock have been calculated for 24 subdivisions (Tinker *et al.* 2019). The density of otters in the affected subdivisions ranged from 0.175 to 1.333 otters per km². Distribution of the population during the proposed project is likely to be similar to that detected during sea otter surveys, as work will occur during the same time of the year that these surveys were conducted.

The documented home range sizes and movement patterns of sea otters illustrate the types of movements that could be seen among otters responding to the proposed activities. Sea otters are non-migratory and generally do not disperse over long distances (Garshelis and Garshelis 1984). They usually remain within a few kilometers of their established feeding grounds (Kenyon 1981). Breeding males stay for all or part of the year in a breeding territory covering up to 1 km (0.62 mi) of coastline while adult females have

home ranges of approximately 8 to 16 km (5 to 10 mi), which may include one or more male territories. Juveniles move greater distances between resting and foraging areas (Lensink 1962; Kenyon 1969; Riedman and Estes 1990; Estes and Tinker 1996). Although sea otters generally remain local to an area, they are capable of long-distance travel. Otters in Alaska have shown daily movement distances greater than 3 km (1.9 mi) at speeds up to 5.5 km per hour (km/hr; 3.4 mi per hour (mi/h)) (Garshelis and Garshelis 1984).

Potential Effects of the Specified Activities

Exposure of Sea Otters to Noise

We do not expect the operations outlined in the Description of Specified Activities and Geographic Region and described in the applicant's petition to lead to take from vessel presence or anthropogenic presence. The tracklines for the vessels will not physically enter low-density or high-density sea otter habitat. Thus, we do not anticipate human-otter interactions that would lead to Level B harassment or other forms of take.

The operations have the potential to result in take of sea otters by harassment from noise. Here, we characterize "noise" as sound released into the environment from human activities that exceeds ambient levels or interferes with normal sound production or reception by sea otters. The terms "acoustic disturbance" or "acoustic harassment" are disturbances or harassment events resulting from noise exposure. Potential effects of noise exposure are likely to depend on the distance of the otter from the sound source and the level of sound the otter receives. Temporary disturbance or localized displacement reactions are the most likely to occur. No lethal take is anticipated, nor can the Service authorize lethal take through an Incidental Take Authorization. Therefore, none will be authorized.

Whether a specific noise source will affect a sea otter depends on several factors, including the distance between the animal and the sound source, the sound intensity, background noise levels, the noise frequency, the noise duration, and whether the noise is pulsed or continuous. The actual noise level perceived by individual sea otters will depend on distance to the source, whether the animal is above or below water, atmospheric and environmental conditions as well as aspects of the noise emitted.

From the discussion below, we expect the actual number of otters experiencing

Level B take due to harassment by noise to be 27 or fewer. While individual otters may be taken more than once, the total number of incidental takes of sea otters is expected to be less than 49.

Sea Otter Hearing

The NSF/L-DEO's 36-airgun array will produce sound frequencies that fall within the hearing range of sea otters and will be audible to animals. Controlled sound exposure trials on southern sea otters (*E. l. nereis*) indicate that otters can hear frequencies between 125 Hz and 38 kHz with best sensitivity between 1.2 and 27 kHz (Ghoul and Reichmuth 2014). Aerial and underwater audiograms for a captive adult male southern sea otter in the presence of ambient noise suggest the sea otter's hearing was less sensitive to high-frequency (greater than 22 kHz) and low-frequency (less than 2 kHz) sound than terrestrial mustelids but was similar to that of a California sea lion (*Zalophus californianus*). However, the subject otter was still able to hear low-frequency sounds, and the detection thresholds for sounds between 0.125–1 kHz were between 116–101 dB, respectively. Dominant frequencies of southern sea otter vocalizations are between 3 and 8 kHz, with some energy extending above 60 kHz (McShane *et al.* 1995; Ghoul and Reichmuth 2012).

Exposure to high levels of sound may cause changes in behavior, masking of communications, temporary or permanent changes in hearing sensitivity, discomfort, and injury to marine mammals. Unlike other marine mammals, sea otters do not rely on sound to orient themselves, locate prey, or communicate underwater; therefore, masking of communications by anthropogenic sound is less of a concern than for other marine mammals. However, sea otters do use sound for communication in air (especially mothers and pups; McShane *et al.* 1995) and may avoid predators by monitoring underwater sound (Davis *et al.* 1987).

Thresholds have been developed for some marine mammals above which exposure is likely to cause behavioral disturbance and injuries (Southall *et al.* 2007; Finneran and Jenkins 2012; NMFS 2016). However, species-specific criteria for sea otters has not been identified. Because sea otter hearing abilities and sensitivities have not been fully evaluated, we relied on the most similar proxy to evaluate the potential effects of noise exposure.

California sea lions (otariid pinnipeds) have a frequency range of hearing most similar to that of southern sea otters (Ghoul and Reichmuth 2014) and provide the closest related proxy for

which data are available. Sea otters and pinnipeds share a common mammalian aural physiology (Echtemer *et al.* 1994; Solntseva 2007). Both are adapted to amphibious hearing, and both use sound in the same way (primarily for in-air communication rather than feeding).

Exposure Thresholds

The National Marine Fisheries Service (NMFS) established noise exposure criteria for identifying underwater noise levels capable of causing Level A harassment (injury) of otariid pinnipeds (NMFS 2018). Sea otter-specific criteria have not been determined. However, because of their biological similarities, we assume that NMFS' noise exposure criteria for otariid pinniped injury is a suitable surrogate for sea otter impacts. Those criteria are based on estimated levels of sound exposure capable of causing a permanent shift in sensitivity of hearing (e.g., a permanent threshold shift (PTS) (NMFS 2018)). A PTS occurs when noise exposure causes hairs within the inner ear system to die.

The NMFS (2018) criteria for sound exposure incorporate two metrics of exposure: The peak level of instantaneous exposure likely to cause PTS, and the cumulative sound exposure level during a 24-hour period (SEL_{cum}). They also include weighting adjustments for the sensitivity of different species to varying frequencies. The PTS-based injury criteria were developed from theoretical extrapolation of observations of temporary threshold shifts (TTS) detected in lab settings during sound exposure trials. Studies were summarized by Finneran (2015). For otariid pinnipeds, PTS is predicted to occur at 232 dB peak or 203 dB SEL_{cum} for impulsive sound, or 219 dB SEL_{cum} for non-impulsive (continuous) sound.

The NMFS criteria for take by Level A harassment represents the best available information for predicting injury from exposure to underwater sound among pinnipeds, and in the absence of data specific to otters, we assume these criteria also represent appropriate exposure limits for Level A take of sea otters.

The NMFS (2018) criteria do not identify thresholds for avoidance of Level B take. For pinnipeds, the NMFS has adopted a 160-dB threshold for Level B take from exposure to impulse noise and a 120-dB threshold for continuous noise (NMFS 1998; HESS 1999; NMFS undated). These thresholds were developed from observations of mysticete (baleen) whales responding to airgun operations (e.g., Malme *et al.* 1983a, b; Richardson *et al.* 1986, 1995) and from equating Level B take with

noise levels capable of causing TTS in lab settings.

We have evaluated these thresholds and determined that the Level B threshold of 120-dB for non-impulsive noise is not applicable to sea otters. The 120-dB threshold is based on studies conducted by Malme *et al.* in the 1980s, during which gray whales (*Eschrichtius robustus*) were exposed to experimental playbacks of industrial noise. Gray whales are in the group of marine mammals believed to be most sensitive to low-frequency sounds, with an estimated audible frequency range of approximately 10 Hz to 30 kHz (Finneran 2015). During the study, conducted at St. Lawrence Island, Alaska, Malme *et al.* (1988) observed the behavioral responses of gray whales to the playback of drillship noise and concluded that "exposure to levels of 120 dB or more would probably cause avoidance of the area by more than one-half of the gray whales." Sea otters do not usually occur at St. Lawrence Island, Alaska, but similar playback studies conducted off the coast of California (Malme 1983a, 1984) included a southern sea otter monitoring component (Riedman 1983, 1984). While the 1983 and 1984 studies detected probabilities of avoidance in gray whales comparable to those reported in Malme *et al.* (1988), there was no evidence of disturbance reactions or avoidance in southern sea otters. Thus, given the different range of frequencies to which sea otters and gray whales are sensitive, the NMFS 120-dB threshold based on gray whale behavior is not appropriate for predicting sea otter behavioral responses, particularly for low-frequency sound.

Although no specific thresholds have been developed for sea otters, several alternative behavioral response thresholds have been developed for pinnipeds. Southall *et al.* (2007, 2019) assessed behavioral response studies and found considerable variability among pinnipeds. The authors determined that exposures between approximately 90 to 140 dB generally do not appear to induce strong behavioral responses in pinnipeds in water. However, they found behavioral effects, including avoidance, become more likely in the range between 120 to 160 dB, and most marine mammals showed some, albeit variable, responses to sound between 140 to 180 dB. Wood *et al.* (2012) later adapted the approach identified in Southall *et al.* (2007) to develop a probabilistic scale for marine mammal taxa at which 10 percent, 50 percent, and 90 percent of individuals exposed are assumed to produce a behavioral response. For many marine

mammals, including pinnipeds, these response rates were set at sound pressure levels of 140, 160, and 180 dB, respectively.

Based on the lack of sea otter disturbance response or any other reaction to the 1980's playback studies and the absence of a clear pattern of disturbance or avoidance behaviors attributable to underwater sound levels up to about 160 dB resulting from low-frequency broadband noise, we assume 120 dB is not an appropriate behavioral response threshold for sea otters exposed to continuous underwater noise.

Thresholds based on TTS have been used as a proxy for Level B harassment (i.e., 70 FR 1871, January 11, 2005; 71 FR 3260, January 20, 2006; and 73 FR 41318, July 18, 2008). Southall *et al.* (2007) derived TTS thresholds for pinnipeds based on 212 dB peak and 171 dB SEL_{cum}. Exposures resulting in TTS in pinnipeds were found to range from 152 to 174 dB (183 to 206 dB SEL) (Kastak *et al.* 2005), with a persistent TTS, if not a PTS, after 60 seconds of 184 dB SEL (Kastak *et al.* 2008). Kastelein *et al.* (2012) found small but statistically significant TTSs at approximately 170 dB SEL (136 dB, 60 minutes (min)) and 178 dB SEL (148 dB, 15 min). Finneran (2015) summarized these and other studies, and the NMFS (2018) has used the data to develop TTS threshold for otariid pinnipeds of 188 dB SEL_{cum} for impulsive sounds and 199 dB SEL_{cum} for non-impulsive sounds.

Exposure to impulsive sound levels greater than 160 dB can elicit behavioral changes in marine mammals that may lead to detrimental disruption of normal behavioral routines. Thus, using information available for other marine mammals as a surrogate and taking into consideration the best available scientific information about sea otters, the Service has set 160 dB of received underwater sound as a threshold for Level B take by disturbance for sea otters for this proposed IHA based on the work of Ghaul and Reichmuth (2012a, b), McShane *et al.* (1995), NOAA (2005), Riedman (1983), Richardson *et al.* (1995), and others. Exposure to unmitigated in-water noise levels between 125 Hz and 38 kHz that are greater than 160 dB—for both impulsive and non-impulsive sound sources—will be considered by the Service as Level B take; thresholds for potentially injurious Level A take will be 232 dB peak or 203 dB SEL for impulsive sounds and 219 dB SEL for continuous sounds (Table 1).

The area in which underwater noise in the frequency range of sea otter hearing will exceed thresholds is termed

the “zone of ensonification.” The ensonification zone in which noise levels exceed thresholds for Level A harassment is often referred to as the

Level A harassment zone. The Level B harassment zone likewise includes areas ensonified to thresholds for Level B harassment of sea otters and extends

from the sound source to the 160-dB isopleth.

TABLE 1—SUMMARY OF THRESHOLDS FOR PREDICTING LEVEL A AND LEVEL B TAKE OF NORTHERN SEA OTTERS FROM UNDERWATER SOUND EXPOSURE IN THE FREQUENCY RANGE 125 HZ–38 KHZ

Marine mammals	Injury (Level A) threshold		Disturbance (Level B) threshold
	Impulsive ¹	Non-impulsive ¹	
			All
Sea otters	232 dB peak; 203 dB SEL _{CUM}	219 dB SEL _{CUM} ²	160 dB _{RMS} .

¹ Based on National Marine Fisheries Service acoustic exposure criteria for take of otariid pinnipeds (NMFS 2018).

² SEL_{CUM} = cumulative sound exposure level.

Evidence From Sea Otter Studies

The available studies of sea otter behavior suggest that sea otters may be more resistant to the effects of sound disturbance and human activities than other marine mammals. For example, at Soberanes Point, California, Riedman (1983) examined changes in the behavior, density, and distribution of southern sea otters that were exposed to recorded noises associated with oil and gas activity. The underwater sound sources were played at a level of 110 dB and a frequency range of 50 Hz to 20 kHz and included production platform activity, drillship, helicopter, and semi-submersible sounds. Riedman (1983) also observed the sea otters during seismic airgun shots fired at decreasing distances from the nearshore environment (50, 20, 8, 3.8, 3, 1, and 0.5 nautical miles (nm)) at a firing rate of 4 shots per minute and a maximum air volume of 4,070 in³. Riedman (1983) observed no changes in the presence, density, or behavior of sea otters as a result of underwater sounds from recordings or airguns, even at the closest distance of 0.5 nm (<1 km or 0.6 mi). However, otters did display slight reactions to airborne engine noise. Riedman (1983, 1984) also monitored the behavior of sea otters along the California coast while they were exposed to a single 1,638-cm³ (100-in³) airgun and a 67,006-cm³ (4,089-in³) airgun array. Sea otters did not respond noticeably to the single airgun, and no disturbance reactions were evident when the airgun array was as close as 0.9 km (0.6 mi).

While at the surface, turbulence from wind and waves attenuates noise more quickly than in deeper water, reducing potential noise exposure (Greene and Richardson 1988; Richardson *et al.* 1995). Additionally, turbulence at the water's surface limits the transference of sound from water to air. A sea otter with its head above water will be exposed to

only a small fraction of the sound energy travelling through the water beneath it. The average time spent above the water each day resting and grooming varies between male and female sea otters and seasonally. Esslinger *et al.* (2014) found in the summer months (*i.e.*, the season when the proposed action will take place), female otters foraged for an average of 8.78 hours per day, while male otters foraged for an average of 7.85 hours per day. Male and female sea otters spent an average of 63 to 67 percent of their summer days at the surface resting and grooming. The amount of total time spent at the surface may help limit sea otters' exposure during noise-generating operations.

Sea otters generally show a high degree of tolerance to noise. In another study using prerecorded sounds, Davis *et al.* (1988) exposed both northern sea otters in Simpson Bay, Alaska, and southern sea otters in Morro Bay, California, to a variety of airborne and underwater sounds, including a warble tone, sea otter pup calls, killer whale calls, air horns, and an underwater noise harassment system designed to drive marine mammals away from crude oil spills. The sounds were projected at a variety of frequencies, decibel levels, and intervals. The authors noted that certain noises could cause a startle response and result in movement away from a noise source. However, the effects were limited in range (no responses were observed for otters approximately 100–200 m (328–656 ft) from the source of the stimuli), and otters stopped moving away as a result of the stimuli within hours or, at most, 3 to 4 days.

In locations that lack frequent human activity, sea otters appear to have a lower threshold for outward signs of disturbance. Sea otters in Alaska have exhibited escape behaviors in response to the presence and approach of vessels. Behaviors included diving or actively swimming away from a boat, hauled-out

sea otters entering the water, and groups of sea otters disbanding and swimming in multiple different directions (Udevitz *et al.* 1995). Sea otters in Alaska have also been shown to avoid areas with heavy boat traffic but return to those same areas during seasons with less traffic (Garshelis and Garshelis 1984). In Cook Inlet, otters drifting on a tide trajectory that would have taken them within 500 m (0.3 mi) of an active offshore drilling rig tended to swim to change their angle of drift to avoid a close approach despite near-ambient noise levels from the work (BlueCrest 2013).

Individual sea otters in Southeast Alaska will likely show a range of responses to noise from NSF/L–DEO's survey equipment and vessels. Some otters will likely show startle responses, change direction of travel, diving, or premature surfacing. Sea otters reacting to survey activities may divert time and attention from biologically important behaviors, such as feeding. Some animals may abandon the survey area and return when the disturbance has ceased. Based on the observed movement patterns of wild sea otters (*i.e.*, Lensink 1962; Kenyon 1969, 1981; Garshelis and Garshelis 1984; Riedman and Estes 1990; Estes and Tinker 1996), we expect some individuals, independent juveniles, for example, will respond to NSF/L–DEO's proposed survey by dispersing to areas of suitable habitat nearby, while others, especially breeding-age adult males, will not be displaced by vessels.

Consequences of Disturbance

The reactions of wildlife to disturbance can range from short-term behavioral changes to long-term impacts that affect survival and reproduction. When disturbed by noise, animals may respond behaviorally (*e.g.*, escape response) or physiologically (*e.g.*, increased heart rate, hormonal response) (Harms *et al.* 1997; Tempel and

Gutierrez 2003). The energy expense and associated physiological effects could ultimately lead to reduced survival and reproduction (Gill and Sutherland 2000; Frid and Dill 2002). For example, South American sea lions (*Otaria byronia*) visited by tourists exhibited an increase in the state of alertness and a decrease in maternal attendance and resting time on land, thereby potentially reducing population size (Pavez *et al.* 2015). In another example, killer whales (*Orcinus orca*) that lost feeding opportunities due to boat traffic faced a substantial (18 percent) estimated decrease in energy intake (Williams *et al.* 2006). Such disturbance effects can have population-level consequences. Increased disturbance rates have been associated with a decline in abundance of bottlenose dolphins (*Tursiops* sp.; Bejder *et al.* 2006; Lusseau *et al.* 2006).

These examples illustrate direct effects on survival and reproductive success, but disturbances can also have indirect effects. Response to noise disturbance is considered a nonlethal stimulus that is similar to an antipredator response (Frid and Dill 2002). Sea otters are susceptible to predation, particularly from killer whales and eagles, and have a well-developed antipredator response to perceived threats. For example, the presence of a harbor seal (*Phoca vitulina*) did not appear to disturb sea otters, but they demonstrated a fear response in the presence of a California sea lion by actively looking above and beneath the water (Limbaugh 1961).

Although an increase in vigilance or a flight response is nonlethal, a tradeoff occurs between risk avoidance and energy conservation. An animal's reactions to noise disturbance may cause stress and direct an animal's energy away from fitness-enhancing activities such as feeding and mating (Frid and Dill 2002; Goudie and Jones 2004). For example, southern sea otters in areas with heavy recreational boat traffic demonstrated changes in behavioral time budgeting showing decreased time resting and changes in haul-out patterns and distribution (Benham *et al.* 2005; Maldini *et al.* 2012). Chronic stress can also lead to weakened reflexes, lowered learning responses (Welch and Welch 1970; van Polanen Petel *et al.* 2006), compromised immune function, decreased body weight, and abnormal thyroid function (Seyle 1979).

Changes in behavior resulting from anthropogenic disturbance can include increased agonistic interactions between individuals or temporary or permanent abandonment of an area (Barton *et al.*

1998). The intensity of disturbance (Cevasco *et al.* 2001), the extent of previous exposure to humans (Holcomb *et al.* 2009), the type of disturbance (Andersen *et al.* 2012), and the age or sex of the individuals (Shaughnessy *et al.* 2008; Holcomb *et al.* 2009) may influence the type and extent of response.

Effects on Habitat and Prey

Physical and biological features of habitat essential to the conservation of sea otters include the benthic invertebrates (urchins, mussels, clams, etc.) that otters eat and the shallow rocky areas and kelp beds that provide cover from predators. Important sea otter habitat in the NSF/L-DEO project area include coastal areas within the 40-m (131-ft) depth contour where high densities of otters have been detected. The MMPA allows the Service to identify avoidance and minimization measures for effecting the least practicable impact of the specified activity on important habitats. Geophysical surveys conducted by NSF/L-DEO may impact sea otters within this important habitat, however, the project is not likely to cause lasting effects to habitat.

The primary prey species for sea otters are sea urchins, abalone, clams, mussels, crabs, and squid (Tinker and Estes 1999). When preferential prey are scarce, otters will also eat kelp, turban snails (*Tegula* spp.), octopuses (*e.g.*, *Octopus* spp.), barnacles (*Balanus* spp.), sea stars (*e.g.*, *Pycnopodia helianthoides*), scallops (*e.g.*, *Patinopecten caurinus*), rock oysters (*Saccostrea* spp.), worms (*e.g.*, *Eudistylia* spp.), and chitons (*e.g.*, *Mopalia* spp.) (Riedman and Estes 1990). A shift to less-preferred prey species may result in more energy spent foraging or processing the prey items; however, the impacts of a change in energy expenditure is not likely seen at the population level (Newsome *et al.* 2015).

Several recent reviews and empirical studies have addressed the effects of noise on invertebrates (Carroll *et al.* 2017). Behavioral changes, such as an increase in lobster (*Homarus americanus*) feeding levels (Payne *et al.* 2007), an increase in wild-caught captive reef squid (*Sepioteuthis australis*) avoidance behavior (Fewtrell and McCauley 2012), and deeper digging by razor clams (*Sinonovacula constricta*; Peng *et al.* 2016) have been observed following experimental exposures to sound. Physical changes have also been seen in response to increased sound levels, including changes in serum biochemistry and

hepatopancreatic cells in a lobster species (*H. americanus*; Payne *et al.* 2007) and long-term damage to the statocysts required for hearing in several cephalopod species (Andre *et al.* 2011; Sole *et al.* 2013).

The effects of increased sound levels on benthic invertebrate larvae have been mixed. Desoto *et al.* (2013) found impaired embryonic development in scallop (*Pecten novaezelandiae*) larvae when exposed to 160 dB. Christian *et al.* (2004) noted a reduction in the speed of egg development of bottom-dwelling crabs following exposure to noise; however, the sound level (221 dB at 2 m or 6.6 ft) was far higher than the proposed seismic array will produce.

While these studies provide evidence of deleterious effects to invertebrates as a result of increased sound levels, Carroll *et al.* (2017) caution that there is a wide disparity between results obtained in field and laboratory settings. In experimental settings, changes were observed only when animals were housed in enclosed tanks and many were exposed to prolonged bouts of continuous, pure tones. We would not expect similar results in open marine conditions. It is unlikely that noises generated by survey activities will have any lasting effect on sea otter prey given the short-term duration of sounds produced by each component of the proposed work.

Potential Impacts on Subsistence Uses

The proposed activities will occur near marine subsistence harvest areas used by Alaska Natives from the villages of Pelican, Sitka, and Port Alexander. Between 1989 and 2019, approximately 5,617 sea otters were harvested from these villages, averaging 187 per year (although numbers from 2019 are preliminary). The large majority (95 percent) were taken by hunters based in Sitka. However, harvest activity takes place in coves where the sounds produced by survey equipment will not harass sea otters.

The proposed project area will not occur in inshore waters and, therefore, will avoid significant overlap with subsistence harvest areas. NSF/L-DEO's activities will not preclude access to hunting areas or interfere in any way with individuals wishing to hunt. NSF/L-DEO will coordinate with Native villages and Tribal organizations to identify and avoid potential conflicts. If any conflicts are identified, NSF/L-DEO will develop a Plan of Cooperation (POC) specifying the particular steps necessary to minimize any effects the project may have on subsistence harvest.

Mitigation and Monitoring

If an IHA for the NSF/L–DEO project is issued, it must specify means for affecting the least practicable adverse impact on sea otters and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance and the availability of sea otters for subsistence uses by coastal-dwelling Alaska Natives.

In evaluating what mitigation measures are appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses, we considered the manner and degree to which the successful implementation of the measures are expected to achieve this goal. We considered the nature of the potential adverse impact being mitigated (likelihood, scope, range), the likelihood that the measures will be effective if implemented, and the likelihood of effective implementation. We also considered the practicability of the measures for applicant implementation (e.g., cost, impact on operations).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, the applicants have proposed mitigation measures including, but not limited to, the following:

- Development of a marine mammal monitoring and mitigation plan;
- Establishment of shutdown and monitoring zones;
- Visual mitigation monitoring by designated Protected Species Observers (PSO);
- Site clearance before startup;
- Soft-start procedures;
- Shutdown procedures; and
- Vessel strike avoidance measures.

These measures are further specified under Proposed Authorization, part B. *Avoidance and Minimization*. The Service has not identified any additional mitigation or monitoring measures not already incorporated into NSF's request that are practicable and would further reduce potential impacts to sea otters and their habitat.

Estimated Incidental Take

Characterizing Take by Level B Harassment

In the previous section, we discussed the components of the project activities that have the potential to affect sea otters. Here, we describe and categorize the physiological and behavioral effects that can be expected based on documented responses to human activities observed during sea otter studies. We also discuss how these

behaviors are characterized under the MMPA.

As we described in *Evidence from Sea Otter Studies*, an individual sea otter's reaction to human activity will depend on the otter's prior exposure to the activity, the potential benefit that may be realized by the individual from its current location, its physiological status, or other intrinsic factors. The location, timing, frequency, intensity, and duration of the encounter are among the external factors that will also influence the animal's response. Intermediate reactions that disrupt biologically significant behaviors are considered Level B harassment under the MMPA. The Service has identified the following sea otter behaviors as indicating possible Level B take:

- Swimming away at a fast pace on belly (i.e., porpoising);
- Repeatedly raising the head vertically above the water to get a better view (spyhopping) while apparently agitated or while swimming away;
- In the case of a pup, repeatedly spyhopping while hiding behind and holding onto its mother's head;
- Abandoning prey or feeding area;
- Ceasing to nurse and/or rest (applies to dependent pups);
- Ceasing to rest (applies to independent animals);
- Ceasing to use movement corridors;
- Ceasing mating behaviors;
- Shifting/jostling/agitation in a raft so that the raft disperses;
- Sudden diving of an entire raft; or
- Flushing animals off a haulout.

This list is not meant to encompass all possible behaviors; other situations may also indicate Level B take.

Reactions capable of causing injury are characterized as Level A harassment events. The proposed action is not anticipated to result in Level A harassment due to exposure of otters to noise capable of causing PTS. However, it is also important to note that, depending on the duration and severity of the above-described Level B behaviors, such responses could constitute take by Level A harassment. For example, while a single flushing event would likely indicate Level B harassment, repeatedly flushing sea otters from a haulout may constitute Level A harassment.

Calculating Take

We assumed all animals exposed to underwater sound levels that meet the acoustic exposure criteria shown in Table 1 will experience, at a minimum, take by Level B harassment due to exposure to underwater noise. To estimate the number of otters that may be exposed to these sound levels, we

worked closely with the applicant to create spatially explicit zones of ensonification around the proposed survey transects based on expected sound source levels and attenuation models. We determined the number of otters present in the ensonification zones using density information generated by Tinker *et al.* (2019) for the subgroups that comprise the Southeast Alaska stock.

Zones of Level A and Level B ensonification were created using the proposed R/V *Langseth* transects along the Southeast Alaskan coast. We developed sound level isopleths through acoustic modeling by NSF/L–DEO for deep water and an analysis of empirical data collected in a 2012 survey by the R/V *Langseth* along the Cascadia Margin in coastal Washington (Crone *et al.* 2014) for intermediate and shallow waters. The 2012 survey in Cascadia was conducted using a 4-string 0.11-m³ (6,600-in³) airgun array at a tow depth of 9 m (29.5 ft), while the proposed activities in Southeast Alaska will use a 0.11-m³ (6,600-in³) airgun array at a tow depth of 12 m (39 ft). To account for this difference, the applicant used a scaling factor (see the application available as described under **ADDRESSES** for details). The largest resulting Level A isopleth calculated from the NSF/L–DEO modeling (where sound levels will be greater than 232 dB peak) encompassed areas up to 10.6 m (34.7 ft) from the sound source. The Level B isopleth (where sound levels will be between 160–231 dB) was based on empirical data and encompassed areas up to 12.65 km (7.9 mi) from the sound source when the R/V *Langseth* was in shallow water (<100 m or 328 ft ocean depth) and up to 9.2 km (5.7 mi) when the vessel was in intermediate depths (100–1,000 m or 328–3,280 ft ocean depth).

The Level A and Level B isopleths were then used to create spatially explicit ensonification zones surrounding the proposed project transects using ArcGIS Pro (2018). Using the *proximity* toolset in ArcGIS Pro, we created a buffer with a 45-m (148-ft) width around the proposed project transects to account for the Level A ensonified area on either side of the 24 m-wide (79 ft-wide) airgun array. To determine the Level B ensonified area, points were first placed along the proposed project transects every 500 m (0.3 mi). We then used bathymetry data to determine ocean depth at each point along the transect. We placed a 12.65-km (7.9-mi) buffer around points in water less than 100 m (328 ft) deep, and a 9.2-km (5.7-mi) buffer around points in water 100–1,000 m (328–3,280 ft)

deep. The resulting ocean depth-informed ensonification zone was then modified to remove “land shadows” (marine areas behind land features). To do this, we created lines representing ensonification that radiated from each point along the proposed project transects. Lines were then clipped with a landform shapefile to identify areas where underwater sound will be absorbed by land features.

As we described in Description of Marine Mammals in the Specified Area, sea otters are overwhelmingly observed (95 percent) within the 40-m (131-ft) depth contour, although they can be found in areas with deeper water. Thus, high-density sea otter habitat was delineated by the 40-m (131-ft) depth contour, and low-density otter habitat was between the 40-m and 100-m (131-

ft to 328-ft) depth contours. Habitat was further divided into subregions established by Tinker *et al.* (2019) as densities of otters in these subregions differed. Otter densities for the affected subregions were determined using 2012 abundance estimates generated using the Bayesian hierarchical model developed by Tinker *et al.* (2019). Abundance estimates are traditionally generated using aerial survey data from high-density habitat (<40 m or 131 ft in depth). To calculate the density of otters in low-density habitat (40–100 m or 131–328 ft ocean depth), we multiplied the density of the adjacent high-density habitat by 0.05. The resulting density estimate accounts for the five percent of otters found in low-density areas.

The Level A ensonification zone did not overlap with either high- or low-

density habitat areas. To determine the amount (km²) of Level B ensonified habitat in each subregion, the high- and low-density habitat shapefiles were clipped using the Level B ensonification shapefiles in ArcGIS Pro. The area impacted in each subregion was multiplied by the estimated otter density in that region to determine the number of otters that will experience Level B sound levels (Table 2). The total number of takes was predicted by estimating the projected days of activity in each subregion using survey start points supplied by the applicant. In several areas, the length and direction of the proposed survey transects make it highly unlikely that impacts will last only one day. In these instances, we estimated two days of disturbance, and thus two takes for each otter.

TABLE 2—ESTIMATED NUMBER OF OTTERS ENSONIFIED BY SOUND LEVELS GREATER THAN 160 dB DUE TO THE PROPOSED ACTIVITIES

[Level B take was calculated by multiplying the area ensonified in each subregion by that subregion's modeled sea otter density, then multiplying by the projected days of ensonification]

Subreg.	Habitat type	Density (otters/km ²)	Area impacted (km ²)	Estimated take/day	Projected days of take	Estimated survey total takes
N06	High (<40 m)	0.778	4.66	4	1	4
S05	High (<40 m)	1.333	8.74	12	2	24
S12	High (<40 m)	0.1748	2.56	1	2	2
N06	Low (40–100 m)	0.034	15.69	1	1	1
S01	Low (40–100 m)	0.084	42.31	4	2	8
S05	Low (40–100 m)	0.123	31.32	4	2	8
S12	Low (40–100 m)	0.0092	647.62	1	2	2
Total .....	.....	.....	.....	27	.....	49
Current Stock Total.	.....	25,584	.....	.....	.....	.....
Percentage of Stock.	.....	.....	.....	0.001	.....	.....

Critical Assumptions

We estimate 49 takes of 27 sea otters by Level B harassment will occur due to NSF/L-DEO's proposed high-energy seismic surveys. In order to conduct this analysis and estimate the potential amount of Level B take, several critical assumptions were made.

Otter density was calculated using a Bayesian hierarchical model created by Tinker *et al.* (2019), which includes assumptions that can be found in the original publication. The most recently available density estimates and those used for our analysis were for the year 2012. Low-density otter populations exhibit a growth rate that is typically directly related to resource availability, with growth rates slowing as the populations approach carrying capacity (Estes 1990). The populations in Southeast Alaska vary in their densities and estimated carrying capacities

(Tinker *et al.* 2019), making it difficult to predict current density values. Thus, we relied on 2012 density estimates to calculate projected take. One subregion within the impact area, S12, was not included in the Tinker *et al.* (2019) published densities. To calculate otter density in this subregion, we used the 2012 aerial survey data that served as the model's primary input. Thus, the S12 density estimate does not benefit from the additional information included in the Bayesian model provided by Tinker *et al.* (2019).

Estimation of ensonification zones used sound attenuation models that focused on absorption and dispersion rather than reflection and refraction. Our models assumed that points of land intercepting high-level noise will effectively attenuate sound levels above 160 dB, and sea otters in areas behind those land features (in land shadows)

will be exposed to sound less than 160 dB. This assumption is adequate for this analysis given the offshore location of the survey transects.

Finally, we estimated the repeated take of a portion of the otters affected by the proposed action due to the presence of the R/V *Langseth* for more than one day. We assume, due to the proposed survey transects, start points, and speed of the R/V *Langseth*, that otters within subregions S01, S05, and S12 will be ensonified for two days each. The applicant has listed a number of potential yet unanticipated reasons the R/V *Langseth* may remain in one area for an extended period of time, including poor data quality, inclement weather, or mechanical issues with the research vessel and/or equipment. However, except for the case of a reshoot due to poor data quality, the vessel's airgun array (*i.e.*, the source of

take) will not be operational during extended delays of operations.

We estimate 49 instances of take by Level B harassment of 27 northern sea otters from the Southeast Alaska stock due to behavioral responses or TTS associated with noise exposure. These levels represent a small proportion of the most recent stock abundance estimate for the Southeast Alaska stock. Take of 27 otters is less than one percent of the best available estimate of the current population size of 25,584 animals in the Southeast Alaska stock (Tinker *et al.* 2019) ($27 \div 25,584 = 0.00105$). Although an estimated 49 instances of take of 27 otters by Level B harassment are possible, most events are unlikely to have significant consequences for the health, reproduction, or survival of affected animals.

Sea otters exposed to sound project-produced sounds are likely to respond with temporary behavioral modification or displacement. Project activities could temporarily interrupt the feeding, resting, and movement of sea otters. Because activities will occur during a limited amount of time and in a localized region, the impacts associated with the project are likewise temporary and localized. The anticipated effects are primarily short-term behavioral reactions and displacement of sea otters near active operations.

Sea otters that encounter the specified activity may exert more energy than they would otherwise due to temporary cessation of feeding, increased vigilance, and retreat from the project area. We expect that affected sea otters will tolerate this exertion without measurable effects on health or reproduction. Most of the anticipated takes will be due to short-term Level B harassment in the form of TTS, startling reactions, or temporary displacement. Chronic exposure to sound levels that cause TTS may lead to PTS (which would constitute Level A injury). While more research into the relationship between chronic noise exposure and PTS is needed (Finneran 2015), it is likely that the transition from temporary effects to permanent cellular damage occurs over weeks, months, or years (Southall *et al.* 2019).

With the adoption of the measures proposed in NSF/L-DEO's application and required by this proposed IHA, estimated take was reduced.

Findings

Small Numbers

For small numbers analyses, the statute and legislative history do not expressly require a specific type of

numerical analysis, leaving the determination of "small" to the agency's discretion. In this case, we propose a finding that the NSF/L-DEO project may result in approximately 49 incidental takes of 27 otters from the Southeast Alaska stock. This represents less than one percent of the estimated stock. Predicted levels of take were determined based on estimated density of sea otters in the project area and an ensonification zone developed using empirical evidence from a similar geographic area and corrected for the methodology proposed by NSF/L-DEO for this project. Based on these numbers, we propose a finding that the NSF/L-DEO project will take only a small number of animals.

Negligible Impact

We propose a finding that any incidental take by harassment resulting from the proposed project cannot be reasonably expected to, and is not reasonably likely to, adversely affect the sea otter through effects on annual rates of recruitment or survival and will, therefore, have no more than a negligible impact on the Southeast Alaska stock of northern sea otters. In making this finding, we considered the best available scientific information, including: The biological and behavioral characteristics of the species, the most recent information on species distribution and abundance within the area of the specified activities, the current and expected future status of the stock (including existing and foreseeable human and natural stressors), the potential sources of disturbance caused by the project, and the potential responses of marine mammals to this disturbance. In addition, we reviewed applicant provided materials, information in our files and datasets, published reference materials, and species experts.

Sea otters are likely to respond to proposed activities with temporary behavioral modification or displacement. These reactions are unlikely to have consequences for the long-term health, reproduction, or survival of affected animals. Most animals will respond to disturbance by moving away from the source, which may cause temporary interruption of foraging, resting, or other natural behaviors. Affected animals are expected to resume normal behaviors soon after exposure with no lasting consequences. Twenty-one otters are estimated to be exposed to seismic noise for two days and thus, will have repeated exposure. However, permanent (*i.e.*, Level A) injury due to chronic sound exposure is estimated to occur at

the scale of weeks, months, or years (Southall *et al.* 2019). Some animals may exhibit more severe responses typical of Level B harassment, such as fleeing, ceasing feeding, or flushing from a haul-out. These responses could have temporary, yet significant, biological impacts for affected individuals but are unlikely to result in measurable changes in survival or reproduction.

The total number of animals affected and severity of impact is not sufficient to change the current population dynamics at the stock scale. Although the specified activities may result in approximately 49 incidental takes of 27 otters from the Southeast Alaska stock, we do not expect this level of harassment to affect annual rates of recruitment or survival or result in adverse effects on the stock.

Our proposed finding of negligible impact applies to incidental take associated with the proposed activities as mitigated by the avoidance and minimization measures identified in NSF/L-DEO's mitigation and monitoring plan. These mitigation measures are designed to minimize interactions with and impacts to sea otters. These measures and the monitoring and reporting procedures are required for the validity of our finding and are a necessary component of the proposed IHA. For these reasons, we propose a finding that the 2021 NSF/L-DEO project will have a negligible impact on the Southeast Alaska stock of northern sea otters.

Impact on Subsistence

We propose a finding that NSF/L-DEO's anticipated harassment will not have an unmitigable adverse impact on the availability of the Southeast Alaska stock of northern sea otters for taking for subsistence uses. In making this finding, we considered the timing and location of the proposed activities and the timing and location of subsistence harvest activities in the area of the proposed project. We also considered the applicant's consultation with subsistence communities, proposed measures for avoiding impacts to subsistence harvest, and commitment to development of a POC, should any concerns be identified.

Required Determinations

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 plan to adopt

NSF's environmental assessment (EA), as we have preliminarily concluded that, as written, the draft EA contains adequate information analyzing the effects on the human environment of issuing the IHA. NSF's EA is available at <https://www.nsf.gov/geo/oce/envcomp/>. If the Service determines that impacts from issuing the IHA would not significantly affect the human environment, we may prepare a Finding of No Significant Impact that would conclude the Service's NEPA process.

We will review all comments submitted in response to this notice as indicated above in **DATES** and **ADDRESSES** prior to concluding our NEPA process or making a final decision on the IHA.

Endangered Species Act (ESA)

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. The proposed activities will occur entirely within the range of the Southeast Alaska stock of the northern sea otter, which is not listed as threatened or endangered under the ESA. The measures included in the proposed IHA will not affect other listed species or designated critical habitat.

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); and
- (5) the Department of the Interior's policies on consultation with Tribes and with Alaska Native Corporations.

We have evaluated possible effects of the proposed activities on federally recognized Alaska Native Tribes and organizations. Through the IHA process identified in the MMPA, the applicant 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. NSF/L-DEO has engaged these groups in informational meetings. We invite continued discussion, either about the project and its impacts or about our coordination and information exchange throughout the IHA/POC process.

Proposed Authorization

We propose to authorize up to 49 incidental takes of 27 Northern sea otters from the Southeast Alaska stock. We authorize take limited to disruption of behavioral patterns that may be caused by geophysical surveys and support activities conducted by NSF/L-DEO in Southeast Alaska, from July 1 to August 31, 2021. We anticipate no take by injury or death to northern sea otters resulting from these surveys.

A. General Conditions for Issuance of the Proposed IHA

1. The taking of Northern sea otters from the Southeast Alaska stock whenever the required conditions, mitigation, monitoring, and reporting measures are not fully implemented as required by the IHA will be prohibited. Failure to follow measures specified may result in the suspension or revocation of the IHA.
2. If take exceeds the level or type identified in the proposed authorization (e.g., greater than 49 incidents of incidental take of 27 otters by Level B harassment), the IHA will be invalidated and the Service will reevaluate its findings. If project activities cause unauthorized take, such as any injury due to seismic noise, acute distress, or any indication of the separation of mother from pup, NSF/L-DEO must take the following actions: (i) Cease its activities immediately (or reduce activities to the minimum level necessary to maintain safety); (ii) report the details of the incident to the Service's MMM within 48 hours; and (iii) suspend further activities until the Service has reviewed the circumstances, determined whether additional mitigation measures are necessary to avoid further unauthorized taking, and notified NSF/L-DEO that it may resume project activities.
3. All operations managers and vessel operators must receive a copy of the IHA and maintain access to it for reference at all times during project

work. These personnel must understand, be fully aware of, and be capable of implementing the conditions of the IHA at all times during project work.

4. The IHA will apply to activities associated with the proposed project as described in this document and in NSF/L-DEO's amended application (LGL 2020). Changes to the proposed project without prior authorization may invalidate the IHA.

5. NSF/L-DEO's IHA application will be approved and fully incorporated into the IHA, unless exceptions are specifically noted herein or in the final IHA. The application includes:

- NSF/L-DEO's original request for an IHA, dated December 19, 2019;
- NSF/L-DEO's response to requests for additional information from the Service, dated January 22, February 19, and February 26, 2020; and
- A revised application, dated October 29, 2020.

6. Operators will allow Service personnel or the Service's designated representative to visit project work sites to monitor impacts to sea otters and subsistence uses of sea otters at any time throughout project activities so long as it is safe to do so. "Operators" are all personnel operating under the NSF/L-DEO's authority, including all contractors and subcontractors.

B. Avoidance and Minimization

7. Seismic surveys must be conducted using equipment that generates the lowest practicable levels of underwater sound within the range of frequencies audible to sea otters.

8. Vessels will not approach within 100 m (328 ft) of individual sea otters or 500 m (0.3 mi) of rafts of otters. Operators will reduce vessel speed if a sea otter approaches or surfaces within 100 m (328 ft) of a vessel.

9. Vessels may not be operated in such a way as to separate members of a group of sea otters from other members of the group.

10. All vessels must avoid areas of active or anticipated subsistence hunting for sea otters as determined through community consultations.

C. Mitigation During Seismic Activities

11. Designated trained and qualified PSOs must be employed to monitor for the presence of sea otters, initiate mitigation measures, and monitor, record, and report the effects of the activities on sea otters. NSF/L-DEO is responsible for providing training to PSOs to carry out mitigation and monitoring.

12. NSF/L-DEO must establish mitigation zones for their 2D seismic

surveys, which generate underwater sound levels at or more than or 160 dB between 125 Hz and 38 kHz. Mitigation zones must include all in-water areas where work-related sound received by sea otters will match the levels and frequencies above. Mitigation zones will be designated as follows:

- Exclusion Zones (EZ) will be established with the following minimum radii: 500 m (0.3 mi) from the source for the full seismic array and 100 m (328 ft) for the single bolt airgun (655 cm³ or 40 in³).
- A Safety Zone (SZ) is an area larger than the EZ and will include all areas within which sea otters may be exposed

to noise levels that will likely result in Level B take.

- Both the EZ and SZ will be centered on the sound source (the seismic array).
- The radius of the SZs are shown in Table 3 (as calculated based on modeling techniques described herein and in Appendix A of NSF/L-DEO's application).

TABLE 3—ESTIMATED RADIAL DISTANCES FROM THE SEISMIC SOUND SOURCE TO THE 160-dB ISOPLETH
[The area within the isopleth is designated as the Safety Zone (SZ)]

Source and volume	Water depth (m)	Predicted distances (in m) to the 160 dB received sound level
Single Bolt airgun, 40 in ³	>1,000 m	¹ 431
	100–1,000 m	² 647
	<100 m	³ 1,041
	<1000 m	¹ 6,733
4 strings, 36 airguns, 6600 in ³	100–1,000m	⁴ 9,468
	<100m	⁴ 12,650

¹ Distance is based on L-DEO model results.

² Distance is based on L-DEO model results with a 1.5 × correction factor between deep and intermediate water depths.

³ Distance is based on empirically derived measurements in the GOM with scaling applied to account for differences in tow depth.

⁴ Based on empirical data from Crone et al. (2014); see Appendix A of the NSF/L-2012;DEO IHA application for details.

13. PSOs must conduct visual monitoring of the entire EZ and the visible SZ continuously during all seismic work occurring in daylight hours.

14. Prior to seismic work, a “ramp-up” procedure must be used to increase the levels of underwater sound at a gradual rate.

- A ramp-up will be used at the initial start of airgun operations and prior to restarting after any period greater than 30 minutes (min) without airgun operations, including a power-down or shutdown event.
- Visual monitoring must begin at least 30 min prior to and continue throughout ramp-up efforts.
- During geophysical work, the number and total volume of airguns will be increased incrementally until the full volume is achieved.
- The rate of ramp-up will be no more than 6 dB per 5-min period. Ramp-up will begin with the smallest gun in the array that is being used for all airgun array configurations. During the ramp-up, the applicable mitigation zones (based on type of airgun and sound levels produced) must be maintained.
- It will not be permissible to ramp-up the full array from a complete shutdown in thick fog or at other times when the outer part of the EZ is not visible.
- Ramp-up of the airguns will not be initiated if a sea otter is sighted within the EZ at any time.

• If sea otters are observed during a ramp-up effort or prior to startup, a PSO must record the observation and monitor the animal's position until it moves out of visual range. Seismic work may commence if, after a full and gradual effort to ramp up the underwater sound level, the sea otter is outside of the EZ and does not show signs of visible distress (for example, vocalizing, repeatedly spy-hopping, or fleeing).

15. The following actions must be taken in response to sea otters in mitigation zones:

- Seismic work will be shut down completely if a sea otter is observed within the 500-m (0.3-mi) EZ for the full array or the 100-m (328-ft) EZ for the 40-cui array.
- When sea otters are observed in visible distress (for example, vocalizing, repeatedly spy-hopping, or fleeing), seismic work must be immediately shut down or powered down to reduce noise exposure.
- The shutdown procedure will be accomplished within several seconds of the determination that a sea otter is in the applicable EZ or as soon as practicable considering worker safety and equipment integrity.
- Following a shutdown, seismic work will not resume until the sea otter has cleared the EZ. The animal will be considered to have cleared the EZ if it is visually observed to have left the EZ or has not been seen within the EZ for 30 minutes or longer.

• Any shutdown due to sea otters sighted within the EZ must be followed by a 30-minute all-clear period and then a standard full ramp-up.

• Any shutdown for other reasons resulting in the cessation of seismic work for a period greater than 30 minutes must also be followed by full ramp-up procedures.

16. Operators may reduce power to seismic equipment as an alternative to a shutdown to prevent a sea otter from entering the EZ. A power-down procedure involves reducing the volume of underwater sound generated. Vessel speed or course may be altered to achieve the same task.

• Whenever a sea otter is detected outside the EZ and, based on its position and motion relative to the seismic work, appears likely to enter the EZ but has not yet done so, the operator may power down to reduce high-level noise exposure.

• When a sea otter is detected in the SZ, an operator may choose to power down when practicable to reduce Level B take, but is not required to do so.

• During a power-down, the number of airguns in use will be reduced to a single mitigation airgun (airgun of small volume such as the 655-cm³ (40-in³) gun), such that the EZ is reduced, making the sea otters unlikely to enter the EZ.

• After a power-down, noise-generating work will not resume until the sea otter has cleared the EZ for the full airgun array. The animal will be

considered to have cleared the EZ if it is visually observed to have left the EZ and has not been seen within the zone for 30 minutes.

17. Visual monitoring must continue for 30 minutes after the use of the acoustic source ceases or the sun sets, whichever is later.

D. Monitoring

18. Operators shall work with PSOs to apply mitigation measures and shall recognize the authority of PSOs up to and including stopping work, except where doing so poses a significant safety risk to vessels and personnel.

19. Duties of PSOs include watching for and identifying sea otters, recording observation details, documenting presence in any applicable monitoring zone, identifying and documenting potential harassment, and working with vessel operators to implement all appropriate mitigation measures.

20. A sufficient number of PSOs will be onboard to meet the following criteria: 100 percent monitoring coverage during all daytime periods of seismic activity; a maximum of four consecutive hours on watch per PSO; a maximum of approximately 12 hours on watch per day per PSO; and at least one observer each on the source vessel and support vessel.

21. All PSOs will complete a training course designed to familiarize individuals with monitoring and data collection procedures. A field crew leader with prior experience as a marine mammal observer will supervise the PSO team. New or inexperienced PSOs will be paired with experienced PSOs so that the quality of marine mammal observations and data recording is kept consistent. Resumes for candidate PSOs will be made available for the Service to review.

22. Observers will be provided with reticule binoculars (10×42), big-eye binoculars or spotting scopes (30×), inclinometers, and range finders. Field guides, instructional handbooks, maps and a contact list will also be made available.

E. Measures To Reduce Impacts to Subsistence Users

23. Prior to conducting the work, NSF/L–DEO will take the following steps to reduce potential effects on subsistence harvest of sea otters:

- Avoid work in areas of known sea otter subsistence harvest;
- Discuss the planned activities with subsistence stakeholders including Southeast Alaska villages and traditional councils;
- Identify and work to resolve concerns of stakeholders regarding the

project's effects on subsistence hunting of sea otters; and

- If any concerns remain, develop a POC in consultation with the Service and subsistence stakeholders to address these concerns.

F. Reporting Requirements

24. NSF/L–DEO must notify the Service at least 48 hours prior to commencement of activities.

25. Reports will be submitted to the Service's MMM weekly during project activities. The reports will summarize project work and monitoring efforts.

26. A final report will be submitted to the Service's MMM within 90 days after completion of work or expiration of the IHA. It will summarize all monitoring efforts and observations, describe all project activities, and discuss any additional work yet to be done. Factors influencing visibility and detectability of marine mammals (*e.g.*, sea state, number of observers, fog, and glare) will be discussed. The report will describe changes in sea otter behavior resulting from project activities and any specific behaviors of interest. Sea otter observation records will be provided in the form of electronic database or spreadsheet files. The report will assess any effects NSF/L–DEO's operations may have had on the availability of sea otters for subsistence harvest and if applicable, evaluate the effectiveness of the POC for preventing impacts to subsistence users of sea otters.

27. Injured, dead, or distressed sea otters that are not associated with project activities (*e.g.*, animals found outside the project area, previously wounded animals, or carcasses with moderate to advanced decomposition or scavenger damage) must be reported to the Service within 24 hours of discovery. Photographs, video, location information, or any other available documentation shall be provided to the Service.

28. All reports shall be submitted by email to fw7_mmm_reports@fws.gov.

29. NSF/L–DEO must notify the Service upon project completion or end of the work season.

Request for Public Comments

If you wish to comment on this proposed authorization, the applicability of NSF's draft EA to the proposed action, or the proposed adoption of NSF's EA, you may submit your comments by any of the methods described in ADDRESSES. Please identify if you are commenting on the proposed authorization, draft EA, or both, make your comments as specific as possible, confine them to issues pertinent to the proposed authorization or draft EA, 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 before the close of the comment period (see DATES).

Comments, including names and street addresses of respondents, will become part of the administrative record for this proposal. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comments to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Gregory Siekaniec,

Regional Director, Alaska Region.

[FR Doc. 2021–12134 Filed 6–8–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX21EE000101100]

Public Meeting of the National Geospatial Advisory Committee

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the U.S. Geological Survey (USGS) is publishing this notice to announce that a Federal Advisory Committee meeting of the National Geospatial Advisory Committee (NGAC) will take place.

DATES: The meeting will be held as a webinar on Tuesday, June 29, 2021 from 1:00 p.m. to 5:00 p.m., and on Wednesday, June 30, 2021 from 1:00 p.m. to 5:00 p.m. (Eastern Daylight Time).

ADDRESSES: The meeting will be held on-line and via teleconference. Instructions for accessing the meeting will be posted at www.fgdc.gov/ngac. Comments can be sent to Ms. Dionne Duncan-Hughes, Group Federal Officer by email to gs-faca-mail@usgs.gov.

FOR FURTHER INFORMATION CONTACT: Mr. John Mahoney, Federal Geographic Data Committee (FGDC), USGS, 909 First Avenue, Suite 800, Seattle, WA 98104; by email at jmahoney@usgs.gov; or by telephone at (206) 220–4621.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix 2), the Government in the Sunshine Act of 1976 (5 U.S.C. 552B, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The NGAC provides advice and recommendations related to management of Federal and national geospatial programs, the development of the National Spatial Data Infrastructure (NSDI), and the implementation of the Geospatial Data Act of 2018 (GDA) and Office of Management and Budget Circular A–16. The NGAC reviews and comments on geospatial policy and management issues and provides a forum to convey views representative of non-federal stakeholders in the geospatial community. The NGAC meeting is one of the primary ways that the FGDC collaborates with its broad network of partners. Additional information about the NGAC meeting is available at: www.fgdc.gov/ngac.

Agenda Topics

- FGDC Update
- GDA Implementation
- NSDI Strategic Plan Information
- Landsat Advisory Group
- Public-Private Partnerships
- NGAC 2021 Activities
- Public Comment

Meeting Accessibility/Special Accommodations: The webinar meeting is open to the public and will take place from 1:00 p.m. to 5:00 p.m. on June 29 and from 1:00 p.m. to 5:00 p.m. on June 30. Members of the public wishing to attend the meeting should visit www.fgdc.gov/ngac or contact Mr. John Mahoney (see **FOR FURTHER INFORMATION CONTACT**). Webinar/conference line instructions will be provided to registered attendees prior to the meeting. Individuals requiring special accommodations to access the public meeting should contact Mr. John Mahoney (see **FOR FURTHER INFORMATION CONTACT**) at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Public Disclosure of Comments: There will be an opportunity for public comment during both days of the meeting. Depending on the number of people who wish to speak and the time available, the time for individual comments may be limited. Written comments may also be sent to the Committee for consideration. To allow for full consideration of information by the Committee members, written comments must be provided to John Mahoney (see **FOR FURTHER INFORMATION**

CONTACT) at least three (3) business days prior to the meeting. Any written comments received will be provided to the committee members before the meeting.

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 may 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.

Authority: 5 U.S.C. Appendix 2.

Signed:

Ivan DeLoatch,

Executive Director, Federal Geographic Data Committee.

[FR Doc. 2021–12018 Filed 6–8–21; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

**[NPS–WASO–NAGPRA–31935;
PPWOCRADN0–PCU00RP15.R50000]**

Native American Graves Protection and Repatriation Review Committee: Notice of Nomination Solicitation

AGENCY: National Park Service, Interior.

ACTION: Request for nominations.

SUMMARY: The National Park Service is soliciting nominations for one member of the Native American Graves Protection and Repatriation Review Committee (Committee). The Secretary of the Interior will appoint one member from nominations submitted by Indian tribes, Native Hawaiian organizations, or traditional Native American religious leaders. The nominee must be a traditional Indian religious leader.

DATES: Nominations must be received by August 9, 2021.

ADDRESSES: Please address nominations to Melanie O'Brien, Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, via email nagpra_info@nps.gov.

FOR FURTHER INFORMATION CONTACT: Melanie O'Brien, via telephone at (202) 354–2201.

SUPPLEMENTARY INFORMATION: The Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) and is regulated by the Federal Advisory Committee Act.

The Review Committee is responsible for:

1. Monitoring the NAGPRA inventory and identification process.
2. Reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items.
3. Facilitating the resolution of disputes.
4. Compiling an inventory of culturally unidentifiable human remains and developing a process for disposition of such remains.
5. Consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the Review Committee affecting such tribes or organizations.
6. Consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA.
7. Making recommendations regarding future care of repatriated cultural items.

The Committee consists of seven members appointed by the Secretary of the Interior. The Secretary may not appoint Federal officers or employees to the Committee. Three members are appointed from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders. At least two of these members must be traditional Indian religious leaders. Three members are appointed from nominations submitted by national museum or scientific organizations. One member is appointed from a list of persons developed and consented to by all of the other members.

Members are appointed for 4-year terms and incumbent members may be reappointed for 2-year terms. The Committee's work is completed during public meetings. The Committee attempts to meet in person twice a year and meetings normally last two or three days. In addition, the Committee may also meet by public teleconference one or more times per year.

Members will be appointed as special Government employees (SGEs). Please be aware that members selected to serve as SGEs will be required, prior to appointment, to file a Confidential Financial Disclosure Report in order to avoid involvement in real or apparent conflicts of interest. You may find a copy of the Confidential Financial Disclosure Report at the following website: <https://www.doi.gov/ethics/special-government-employees/financial-disclosure>. Additionally, after appointment, members appointed as SGEs will be required to meet applicable financial disclosure and ethics training requirements. Please contact 202–208–7960 or

DOI_Ethics@sol.doi.gov with any questions about the ethics requirements for members appointed as SGEs.

Committee members serve without pay but are reimbursed for each day of meeting attendance. Committee members are also reimbursed for travel expenses incurred in association with Committee meetings (25 U.S.C. 3006(b)(4)). Additional information regarding the Committee, including the Committee's charter, meeting protocol, and dispute resolution procedures, is available on the National NAGPRA Program website, at <https://www.nps.gov/nagpra/review-committee.htm>.

Nominations must:

1. If submitted by an Indian tribe or Native Hawaiian organization, be submitted on the official letterhead of the Indian tribe or Native Hawaiian organization.
2. If submitted by an Indian tribe or Native Hawaiian organization, affirm that the signatory is the official authorized by the Indian tribe or Native Hawaiian organization to submit the nomination.
3. If submitted by a Native American traditional religious leader, affirm that the signatory meets the definition of traditional Native American religious leader.
4. Provide the nominator's original signature, daytime telephone number, and email address.
5. Include the nominee's full legal name, home address, home telephone number, and email address.

Nominations should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Committee and permit the Department of the Interior to contact a potential member.

Authority: 5 U.S.C. Appendix 2; 25 U.S.C. 3006.

Alma Rippes,

Chief, Office of Policy.

[FR Doc. 2021-12022 Filed 6-8-21; 8:45 am]

BILLING CODE 4312-52-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-1546-1549 (Final)]

Thermal Paper From Germany, Japan, Korea, and Spain; Scheduling of the Final Phase of Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation Nos. 731-TA-1546-1549 (Final) pursuant to the Tariff Act of 1930 ("the Act") to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of thermal paper from Germany, Japan, Korea, and Spain, provided for in subheadings 4811.9080 and 4811.9090 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce ("Commerce") to be sold at less-than-fair-value.

DATES: May 12, 2021.

FOR FURTHER INFORMATION CONTACT: Ahdia Bavari ((202) 205-3191), 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 investigations may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of this investigation, Commerce has defined the subject merchandise as "thermal paper in the form of 'jumbo rolls' and certain 'converted rolls.' The scope covers jumbo rolls and converted rolls of thermal paper with or without a base coat (typically made of clay, latex, and/or plastic pigments, and/or like materials) on one or both sides; with thermal active coating(s) (typically made of sensitizer, dye, and co-reactant, and/or like materials) on one or both sides; with or without a top coat

(typically made of pigments, polyvinyl alcohol, and/or like materials), and without an adhesive backing. Jumbo rolls are defined as rolls with an actual width of 4.5 inches or more, an actual weight of 65 pounds or more, and an actual diameter of 20 inches or more (jumbo rolls). All jumbo rolls are included in the scope regardless of the basis weight of the paper. Also included in the scope are 'converted rolls' with an actual width of less than 4.5 inches, and with an actual basis weight of 70 grams per square meter (gsm) or less. The scope of this investigation covers thermal paper that is converted into rolls with an actual width of less than 4.5 inches and with an actual basis weight of 70 gsm or less in third countries from jumbo rolls produced in the subject countries. The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 4811.90.8030 and 4811.90.9030. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive."

Background.—The final phase of these investigations is being scheduled, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), as a result of affirmative preliminary determinations by Commerce that imports of thermal paper from Germany, Japan, Korea, and Spain are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on October 7, 2020, by Appvion Operations, Inc. (Appleton, Wisconsin) and Domtar Corporation (Fort Mill, South Carolina).

For further information concerning the conduct of this phase of the investigations, hearing procedures, 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 and C (19 CFR part 207).

Participation in the investigations 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 final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the

investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Please note the Secretary's Office will accept only electronic filings during 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.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on September 8, 2021, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Tuesday, September 21, 2021. Information about the place and form of the hearing, including about how to participate in and/or view the hearing, will be posted on the Commission's website at <https://www.usitc.gov/calendarpad/calendar.html>. Interested parties should check the Commission's website periodically for updates. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before Friday, September 17, 2021. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference

to be held at 9:30 a.m. on Monday, September 20, 2021. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is September 15, 2021. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is September 30, 2021. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before September 30, 2021. On October 20, 2021, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 22, 2021, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. 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, elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all

other parties to the investigations (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.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: June 4, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–12073 Filed 6–8–21; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–21–0008; NARA–2021–032]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on [regulations.gov](https://www.regulations.gov) for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: NARA must receive comments by July 26, 2021.

ADDRESSES: You may submit comments by the following method. You must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>.

Due to COVID–19 building closures, we are currently temporarily not accepting comments by mail. However, if you are unable to comment via [regulations.gov](https://www.regulations.gov), you may contact request.schedule@nara.gov for instructions on submitting your comment.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at regulation_comments@nara.gov. For information about records

schedules, contact Records Management Operations by email at request.schedule@nara.gov, or by phone at 301-837-1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule.

We have uploaded the records schedules and accompanying appraisal memoranda to the [regulations.gov](https://www.regulations.gov) docket for this notice as “other” documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the [regulations.gov](https://www.regulations.gov) portal, you may contact request.schedule@nara.gov for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on [regulations.gov](https://www.regulations.gov) a “Consolidated Reply” summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at [regulations.gov](https://www.regulations.gov) to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have

to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at <https://www.archives.gov/records-mgmt/rcs>, after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA’s approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records’ administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government’s activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist’s consideration process.

Schedules Pending

1. Department of Health and Human Services, Program Support Center, Board for Correction Commissioned Corps Records (DAA-0468-2020-0001).
2. Department of Transportation, Federal Aviation Administration, Traffic Flow Management System (DAA-0237-2019-0002).
3. Consumer Financial Protection Bureau, Agency-wide, Nationwide

Mortgage Licensing System and Registry Data (DAA-0587-2021-0001).

Laurence Brewer,
Chief Records Officer for the U.S.
Government.

[FR Doc. 2021-12036 Filed 6-8-21; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Consumer Assistance Center

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before August 9, 2021 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Mackie Malaka, National Credit Union Administration, 1775 Duke Street, Suite 6060, Alexandria, Virginia 22314; Fax No. 703-519-8579; or email at PRAComments@NCUA.gov.

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to Mackie Malaka at the address above or telephone 703-548-2704.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133-0200.

Title: Consumer Assistance Center.

Type of Review: Extension of a currently approved collection.

Abstract: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. 111-203) authorizes the National Credit Union Administration (NCUA) to accept and resolve member complaints. NCUA has a centralized website for the intake of consumer inquiries and complaints under the Consumer Assistance Center, via [MyCreditUnion.gov](https://www.MyCreditUnion.gov). The Consumer Assistance Center assists consumers with information about federal financial consumer protection and share insurance matters and assists in resolving disputes with credit unions. Consumers can make inquiries or

submit a complaint electronically through the *MyCreditUnion.gov* website. The on-line portal offers a template for consumers to use to aid in identifying their concerns.

Affected Public: Individuals and Households; Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 14,912.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Responses: 14,912.

Estimated Burden Hours per Response: 0.15.

Estimated Total Annual Burden Hours: 2,209.

Reason for Change: Adjustment are being made to provide a current accounting of respondents making inquiries or submissions under this collection of information.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (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 the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on June 4, 2021.

Dated: June 4, 2021.

Mackie I. Malaka,

NCUA PRA Clearance Officer.

[FR Doc. 2021-12108 Filed 6-8-21; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification request received and permit issued.

SUMMARY: The National Science Foundation (NSF) is required to publish

a notice of requests to modify permits issued to conduct activities regulated and permits issued under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of a requested permit modification and permit issued.

FOR FURTHER INFORMATION CONTACT:

Nature McGinn, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703-292-8224; email: ACApermits@nsf.gov.

SUPPLEMENTARY INFORMATION: The National Science Foundation (NSF), as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection.

NSF issued a permit (ACA 2020-004) to Leidos Innovations Corporation on November 8, 2019. The issued permit allows the permit holder to conduct waste management activities associated with the implementation of the United States Antarctic Program (USAP). The USAP Master Waste permit applies to all USAP activities, including major reconstruction and modernization efforts, conducted by all organizations supporting or supported by the Program. This includes the transport of both hazardous and non-hazardous waste from Antarctica to the United States. Under this permit, Leidos collects, stores, and ships both hazardous and non-hazardous waste materials and is responsible for the final disposition of these materials upon return to the United States.

Now the permit holder proposes a permit modification to revise and update several statements regarding the handling and disposition of hazardous wastes from Palmer Station and the research vessels as follows to more accurately reflect current and planned practices.

Permit Application Page 4-11

Original text: Nonhazardous wastes generated at the [Palmer] station will be transported by vessel to Chile and Antarctic hazardous wastes will be retrograded directly to the United States.

Revised text: Nonhazardous wastes generated at the station will be transported by vessel to Chile. Antarctic hazardous wastes will be removed from

the Antarctic for final disposition in either the United States or another nation in accordance with all relevant statutes and regulations. The Antarctic hazardous waste may be transported to Chile and/or McMurdo Station as an intermediate step prior to retrograde to the final disposal location. Any temporary storage and transport activities would comply with all applicable regulations in Chile and the 15-month storage period maximum for Antarctic hazardous wastes at McMurdo Station established by the ACA [Antarctic Conservation Act].

Permit Application Page 4-14

Original text: Antarctic hazardous wastes generated onboard the ARSV Laurence M. Gould because of scientific research activities will typically be offloaded at Palmer Station for subsequent processing, interim storage, and retrograde to the United States. Because of the RVIB Nathaniel B. Palmer's size, it cannot access the docking facilities at Palmer Station and therefore research-related Antarctic hazardous waste generated onboard may be transferred to the ARSV Laurence M. Gould, offloaded at McMurdo Station, or transported directly to the United States.

Revised text: Antarctic hazardous wastes generated onboard the ARSV Laurence M. Gould and RVIB Nathaniel B. Palmer will typically be offloaded at Palmer Station for subsequent processing, interim storage, and retrograde for final disposition. Depending on the vessels' schedules, Antarctic hazardous waste may sometimes be transferred from one vessel to the other in order to consolidate the Antarctic hazardous wastes from both vessels into one shipment. Additionally, Antarctic hazardous waste can be offloaded at McMurdo Station instead of Palmer Station for subsequent processing, interim storage, and retrograde. Antarctic hazardous waste may also be retrograded directly to the final disposition location instead of being offloaded at one of the research stations first.

The Environmental Officer has reviewed the modification request and has determined that the amendment is not a material change to the permit, and it will have a less than a minor or transitory impact.

Dates of Permitted Activities: November 8, 2019 to September 30, 2024.

The permit modification was issued on June 4, 2021.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2021-12082 Filed 6-8-21; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2021-0116]

Report to Congress on Abnormal Occurrences; Fiscal Year 2020 Dissemination of Information

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing NUREG-0090, Volume 43, "Report to Congress on Abnormal Occurrences: Fiscal Year 2020." The report describes those events that the NRC or an Agreement State identified as abnormal occurrences (AOs) during fiscal year (FY) 2020, based on the criteria defined by the Commission. The report describes seven events at Agreement State-licensed facilities and two events at NRC-licensed facilities.

DATES: NUREG-0090, Volume 43, is available June 9, 2021.

ADDRESSES: Please refer to Docket ID NRC-2021-0116 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-2021-0116. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION**

CONTACT section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. 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.

FOR FURTHER INFORMATION CONTACT:

Minh-Thuy Nguyen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-5163, email: Minh-Thuy.Nguyen@nrc.gov.

SUPPLEMENTARY INFORMATION: Section 208 of the Energy Reorganization Act of 1974, as amended (Pub. L. 93-438), defines an "abnormal occurrence" as an unscheduled incident or event that the NRC determines to be significant from the standpoint of public health or safety. The FY 2020 AO report, NUREG-0090, Volume 43, "Report to Congress on Abnormal Occurrences: Fiscal Year 2020" (ADAMS Accession No. ML21152A287), describes those events that the NRC identified as AOs during FY 2020.

This report describes seven events in Agreement States and two events involving NRC licensees that were identified as AOs during FY2020. Eight AOs were medical events as defined in part 35 of title 10 of the *Code of Federal Regulations*, "Medical Use of Byproduct Material." There was one AO that was a human exposure event. The NRC did not identify any events at commercial nuclear power plants as AOs.

The NRC identified four events during FY 2020 that met the guidelines for inclusion in Appendix B, "Other Events of Interest." The first of these events was a human exposure event with possible internal contamination. The second event involved a gauge failure that resulted in unintended exposure to seven individuals, three of whom were classified as radiation workers who received occupational radiation exposure below regulatory limits. The third event was a stuck source event that resulted in an exposure above the regulatory annual limit to an individual involved in recovering the source. The fourth event concerned an extended loss of offsite power event at a commercial nuclear power plant. No events met the guidelines for inclusion in Appendix C, "Updates of Previously Reported Abnormal Occurrences."

Agreement States are the 39 U.S. States that currently have entered into formal agreements with the NRC pursuant to Section 274 of the Atomic Energy Act of 1954, as amended (AEA), to regulate certain quantities of AEA-licensed material at facilities located within their borders.

The Federal Reports Elimination and Sunset Act of 1995 (Pub. L. 104-68) requires that AOs be reported to Congress annually. The full report,

NUREG-0090, Volume 43, "Report to Congress on Abnormal Occurrences: Fiscal Year 2020," is also available electronically at the NRC's website at <https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/>.

Dated: June 3, 2021.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2021-12046 Filed 6-8-21; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-7029; NRC-2020-0232]

Defense Threat Reduction Agency, Ft. Belvoir, Virginia

AGENCY: Nuclear Regulatory Commission.

ACTION: License; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued Special Nuclear Materials (SNM) License No. SNM-7005 to the Defense Threat Reduction Agency (DTRA), in Ft. Belvoir, Virginia to possess and use SNM for education, research, and training programs. The license authorizes DTRA to possess and use SNM for 10 years from the date of issuance.

DATES: License SNM-7005 was issued May 20, 2021.

ADDRESSES: Please refer to Docket ID NRC-2020-0232 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-2020-0232. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION**

CONTACT section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. 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. In addition, for the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section.

• **Attention:** The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at pdr.resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Tyrone D. Naquin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-7352; email: Tyrone.Naquin@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The DTRA is a combat support agency and a defense agency with a mission to counter the threats posed by weapons of mass destruction, including chemical, biological, radiological, nuclear, and high-yield explosives; counter the threats posed by the growing and evolving categories of improvised threats, including improvised explosive devices, car bombs and weaponized

consumer drones, as well as the tactics, technologies and networks that put them on the battlefield; and to ensure that the U.S. military maintains a safe, secure, effective and credible nuclear weapons deterrent.

II. Discussion

Pursuant to Section 2.106 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is providing notice of the issuance of new license SNM-7005 to DTRA, which authorizes DTRA to possess and use SNM for education, research, and training programs at its location in Ft. Belvoir, Virginia. The original application for a license was submitted on August 21, 2020 (ADAMS Accession No. ML20254A189). DTRA subsequently supplemented and revised its application in response to a request for additional information (ADAMS Accession No. ML21057A037) on February 26, 2021. Because the licensed material will be used for research and development purposes, issuance of License SNM-7005 is an action that is categorically excluded from a requirement to prepare an environmental assessment or environmental impact statement, pursuant to 10 CFR 51.22(c)(14)(v).

The NRC previously published notice of DTRA's request for a materials license with a notice of opportunity to request a hearing in the **Federal Register** on October 28, 2020 (85 FR 68374). The

NRC did not receive a request for a hearing or for a petition for leave to intervene. This license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the NRC's rules and regulations as set forth in 10 CFR Chapter 1.

Accordingly, this license was issued on May 20, 2021, and was effective immediately.

The NRC prepared a safety evaluation report for the issuance of License SNM-7005 and concluded that the licensee can operate the facility without endangering the health and safety of the public.

III. Availability of Documents

In accordance with 10 CFR 2.390 of the NRC's “Rules of Practice,” the details with respect to this action, including the safety evaluation report and accompanying documentation and license, are available electronically at the NRC's Electronic Reading Room at <https://www.nrc.gov/reading-rm/adams.html>. From this site, you can access ADAMS, which provides text and image files of the NRC's public documents. For further details related to this action, visit <https://www.regulations.gov> under Docket ID NRC-2020-0232.

The documents identified in the following table are available to interested persons through ADAMS accession numbers as indicated.

Document description	ADAMS Accession No.
DTRA's application for materials license, August 21, 2020	ML20254A189
Response to Request for Additional Information and Revisions to application, February 26, 2021	ML21057A037
Issuance of SNM-7005, May 20, 2021	ML21064A164 (Package)
NRC Safety Evaluation Report, May 20, 2021	ML21064A166
Special Nuclear Materials License for the DTRA, May 20, 2021	ML21064A167

Dated: June 3, 2021.

For the Nuclear Regulatory Commission.

Yaira K. Diaz-Sanabria,

Acting Director, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021-12070 Filed 6-8-21; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92098; File No. SR-FINRA-2021-013]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Supplemental Inventory Schedule Pursuant to FINRA Rule 4524 (Supplemental FOCUS Information)

June 3, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 26,

2021, the Financial Industry Regulatory Authority, Inc. (“FINRA”) 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 FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the Supplemental Inventory Schedule ("SIS") pursuant to FINRA Rule 4524 (Supplemental FOCUS Information) so that members that are filers of FOCUS Report Part II will not be required to file the SIS. The proposed rule change does not make any other change to the SIS or the instructions thereto.

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA Rule 4524 provides in part that, as a supplement to filing FOCUS Reports required pursuant to SEA Rule 17a-5⁴ and FINRA Rule 2010, each member, as FINRA shall designate, shall file such additional financial or operational schedules or reports as FINRA may deem necessary or appropriate for the protection of investors or in the public interest. In general, members with a FOCUS filing requirement must either file a FOCUS Report Part II if they clear transactions or carry customer accounts⁵ or file a

FOCUS Report Part IIA if they do not.⁶ Members that are government securities broker-dealers registered under SEA Section 15C⁷ do not file a FOCUS Report and instead are required to file reports concerning their financial and operational status using the Report on Finances and Operations of Government Securities Brokers and Dealers ("FOGS Report").⁸ FINRA established the SIS requirement pursuant to Rule 4524 in 2014.⁹ Pursuant to this requirement, the SIS must be filed by a member that is required to file FOCUS Report Part II, FOCUS Report Part IIA or the FOGS Report Part I, with inventory positions as of the end of the FOCUS or FOGS reporting period, unless the member has (1) a minimum dollar net capital or liquid capital requirement of less than \$100,000; or (2) inventory positions consisting only of money market mutual funds. A member with inventory positions consisting only of money market mutual funds must affirmatively indicate through the eFOCUS system that no SIS filing is required for the reporting period. As FINRA noted in establishing the SIS, the purpose of the SIS requirement is to provide more detailed information of inventory positions held by members.¹⁰

The Commission, as part of its rulemakings pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")¹¹ to establish a regulatory framework for security-based swaps ("SBS"), has adopted among other things amendments to the FOCUS reporting requirements, including amendments to FOCUS Report Part II¹² designed to elicit additional information about the SBS activities of broker-dealers that file FOCUS Report Part II, including broker-dealers that will also be registered as SBS dealers and major SBS participants.¹³

II. Such members are referred to as "alternative net capital" or "ANC" broker-dealers.

⁶ SEA Rule 17a-5.

⁷ 15 U.S.C. 78o-5.

⁸ Department of the Treasury Form G-405.

⁹ See Securities Exchange Act Release No. 73192 (September 23, 2014), 79 FR 58390 (September 29, 2014) (Order Approving Proposed Rule Change; File No. SR-FINRA-2014-025); see also Regulatory Notice 14-43 (October 2014) (SEC Approves Supplemental Inventory Schedule).

¹⁰ See note 9 *supra*.

¹¹ Public Law 111-203, 124 Stat. 1376 (2010).

¹² See Securities Exchange Act Release No. 87005 (September 19, 2019), 84 FR 68550 (December 16, 2019) (Final Rule: Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers) ("Reporting Requirements Release").

¹³ See Reporting Requirements Release, 84 FR at 68573. Pursuant to the SEC's rule change, ANC broker-dealers that currently file FOCUS Report Part II CSE will file new FOCUS Report Part II.

FINRA believes that Schedule 1—Aggregate Securities, Commodities, and Swaps Positions ("Schedule 1") to FOCUS Report Part II, as amended, includes substantially all the information that is required by the SIS, including, among other things, information on the following types of positions:

- U.S. Treasury securities;
 - U.S. government agency and U.S. government-sponsored enterprise securities;
 - securities issued by states and political subdivisions in the U.S.;
 - foreign securities;
 - money market instruments;
 - private label mortgage backed securities;
 - other asset-backed securities;
 - corporate obligations;
 - stocks and warrants (other than arbitrage positions);
 - arbitrage positions;
 - spot commodities;
 - other securities and commodities;
- and
- securities with no ready market.

Further, line 11 of the SIS requires specified information on "derivatives including options," based on whether the positions are centrally cleared or not. On Schedule 1 this information will be reported based on whether the position is a cleared or non-cleared SBS, mixed swap or swap, or will be reported under the category "other derivatives and options."¹⁴ Schedule 1 will also require information on counterparty netting and cash collateral netting.

Given that substantially all the information required by the SIS is covered by Schedule 1 of FOCUS Report Part II, as amended, FINRA believes that it would be an unnecessary duplication of reporting to require members that file FOCUS Report Part II to continue to submit the SIS after the compliance date¹⁵ for certain of the SEC's SBS

¹⁴ Schedule 1 requires the information for cleared and non-cleared SBS, mixed swaps and swaps in separate categories on Lines, 15, 16 and 17 of Schedule 1, while the SIS requires that SBS and swaps be reported in aggregate under "centrally cleared" and "all other" under Line 11 of the SIS. Further, Schedule 1 requires that other derivatives or options be reported in aggregate on Line 18 of Schedule 1, while the SIS specifies separate categories for "centrally cleared" and "all other" options, "forward settling and delayed delivery transactions," "futures" and "other" products under Line 11 of the SIS. Also, under Line 13 of the SIS ("securities with no ready market"), the category for "other (include limited partnership interests)" is reflected as "other" under Line 13 of Schedule 1.

¹⁵ The Commission has broadly coordinated the compliance date for certain SBS rulemakings by setting October 6, 2021, as the compliance date (the "compliance date" or "SBS compliance date") for the registration requirements that the Commission

Continued

⁴ 17 CFR 240.17a-5 (hereinafter cited as SEA "Rule 17a-5"). SEA Rule 17a-5 governs financial and operational reporting by brokers and dealers. Members are required to file with FINRA, through the eFOCUS System, reports concerning their financial and operational status using SEC Form X-17A-5 (the "FOCUS Report"). See, e.g., Information Notice, November 23, 2020 (2021 and First Quarter of 2022 Report Filing Due Dates); Regulatory Notice 18-38 (November 2018) (Amendments to the SEC's Financial Reporting Requirements—eFOCUS System Updates and Annual Audit Requirements). "FOCUS" stands for Financial and Operational Combined Uniform Single.

⁵ Currently, members that calculate net capital using Appendix E to SEA Rule 15c3-1 file FOCUS Report Part II CSE, rather than FOCUS Report Part

rulemakings, including the new FOCUS reporting requirements pursuant to the Reporting Requirements Release. As such, in the interest of avoiding unnecessary duplication, FINRA believes it is appropriate to remove FOCUS Report Part II filers from the scope of members required to file the SIS.¹⁶ Accordingly, the proposed rule change would revise the first paragraph under the General Instructions to the SIS so as to provide, in relevant part, that: “The Supplemental Inventory Schedule (SIS) is to be filed within 20 business days after the end of each firm’s FOCUS reporting period by all FOCUS Part IIA and FOGS Part I filers . . .”¹⁷ FINRA believes it is appropriate to implement this revision in alignment with the reporting cycle that coincides with the SEC’s SBS compliance date. FINRA is not proposing any other change to the SIS.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the implementation date of the proposed rule change will be October 31, 2021, for SIS filings that report on the month ending October 31, 2021, and are due by November 30, 2021. Thus, SISs filed on or after October 31, 2021, would reflect the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁸ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Consistent with the provisions of the Act, FINRA believes that eliminating the SIS filing requirement for members that file

adopted for SBS dealers and major SBS participants. See Reporting Requirements Release, 84 FR at 68600; see also Key Dates for Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, available on the Commission website at: <<https://www.sec.gov/page/key-dates-registration-security-based-swap-dealers-and-major-security-based-swap-participants>>.

¹⁶ FINRA notes that members that have elected to be treated as capital acquisition brokers (“CABs”) would be subject to the proposed rule change to the extent that FINRA Rule 4524, pursuant to CAB Rule 452(b), applies to CABs. To the extent any CABs are FOCUS Report Part II filers, then, pursuant to the rule change, such firms would no longer need to file the SIS.

The proposed rule change would not impact funding portal members because such members are not subject to Rule 4524 and are not subject to the FOCUS reporting requirements.

¹⁷ The SIS, as proposed to be revised pursuant to the rule change, is included as Exhibit 3 to this rule filing.

¹⁸ 15 U.S.C. 78o–3(b)(6).

FOCUS Report Part II, as amended by the Reporting Requirements Release, will avoid unnecessary duplication of reporting for such members while ensuring that regulators continue to receive the needed information reflected on these forms, given that Schedule 1 of FOCUS Report Part II, as amended, includes substantially all the information required by the SIS. The proposed rule change will thereby reduce unnecessary burdens while also helping to protect investors and serve the public interest.

B. Self-Regulatory Organization’s Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Schedule 1 of FOCUS Report Part II, as amended, requires substantially all the information required by the SIS. Eliminating the SIS filing requirement for members that file FOCUS Report Part II, as amended, would avoid unnecessary duplication of reporting, thereby reducing burdens for such members, while ensuring that regulators continue to receive the needed information reflected on these forms.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days 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 Act¹⁹ and Rule 19b–4(f)(6) thereunder.²⁰

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

to determine whether the proposed rule 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–FINRA–2021–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2021–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2021–013 and should be submitted on or before June 30, 2021.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-12031 Filed 6-8-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92104; File No. SR-NYSEArca-2021-46]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Nuveen Santa Barbara Dividend Growth ETF, Nuveen Small Cap Select ETF, and Nuveen Winslow Large-Cap Growth ESG ETF Under NYSE Arca Rule 8.601-E (Active Proxy Portfolio Shares)

June 3, 2021.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on May 26, 2021, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to to [sic] list and trade shares of the following under NYSE Arca Rule 8.601-E: Nuveen Santa Barbara Dividend Growth ETF, Nuveen Small Cap Select ETF, and Nuveen Winslow Large-Cap Growth ESG ETF. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change

and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has adopted NYSE Arca Rule 8.601-E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (“UTP”), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.⁴ Commentary .01 to Rule 8.601-E requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade shares (“Shares”) of Active Proxy Portfolio Shares of the Nuveen Santa Barbara Dividend Growth ETF, Nuveen Small Cap Select ETF, and Nuveen Winslow Large-Cap Growth ESG ETF (each a “Fund” and, collectively, the “Funds”) under Rule 8.601-E.

⁴ See Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR-NYSEArca-2019-95). Rule 8.601-E(c)(1) provides that “[t]he term ‘Active Proxy Portfolio Share’ means a security that (a) is issued by a investment company registered under the Investment Company Act of 1940 (‘Investment Company’) organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (‘NAV’); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder’s request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.” Rule 8.601-E(c)(2) provides that “[t]he term ‘Actual Portfolio’ means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company’s calculation of NAV at the end of the business day.” Rule 8.601-E(c)(3) provides that “[t]he term ‘Proxy Portfolio’ means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series.”

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600-E⁵ and for which a “Disclosed Portfolio” is required to be disseminated at least once daily,⁶ the portfolio for an issue of Active Proxy Portfolio Shares will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the Investment Company Act of 1940 (the “1940 Act”).⁷ The composition of

⁵ The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under NYSE Arca Rule 8.600-E. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR-NYSEArca-2009-55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR-NYSEArca-2010-79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR-NYSEArca-2010-118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF). The Commission also has approved a proposed rule change relating to generic listing standards for Managed Fund Shares. Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR-NYSEArca-2015-110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

⁶ NYSE Arca Rule 8.600-E(c)(2) defines the term “Disclosed Portfolio” as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of net asset value at the end of the business day. NYSE Arca Rule 8.600-E(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

⁷ A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N-CSR under the 1940 Act. Information reported on Form N-PORT for the third month of a fund’s fiscal quarter will be made publicly available 60 days after the end of a fund’s fiscal quarter. Form N-PORT requires reporting of a fund’s complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a series of Active Proxy Portfolio Shares’ Statement of Additional Information (“SAI”), its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A series of Active Proxy Portfolio Shares’ SAI and Shareholder Reports will

Continued

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

the portfolio of an issue of Active Proxy Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio and/or cash with a value equal to the next-determined NAV. A series of Active Proxy Portfolio Shares will disclose the Proxy Portfolio on a daily basis, which, as described above, is designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares.

The Commission has previously approved listing and trading on the Exchange of series of Active Proxy Portfolio Shares under NYSE Arca Rule 8.601-E.⁸

The Shares of the Funds will be issued by the Nushares ETF Trust (the

be available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

⁸ See Securities Exchange Act Release Nos. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR-NYSEArca-2019-95) (Notice of Filing of Amendment No. 6 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 6, to Adopt NYSE Arca Rule 8.601-E to Permit the Listing and Trading of Active Proxy Portfolio Shares and To List and Trade Shares of the Natixis U.S. Equity Opportunities ETF Under Proposed NYSE Arca Rule 8.601-E) ("Natixis Order"); 89192 (June 30, 2020), 85 FR 40699 (July 7, 2020) (SR-NYSEArca-2019-96) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to List and Trade Two Series of Active Proxy Portfolio Shares Issued by the American Century ETF Trust under NYSE Arca Rule 8.601-E); 89191 (June 30, 2020), 85 FR 40358 (July 6, 2020) (SR-NYSEArca-2019-92) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Four Series of Active Proxy Portfolio Shares Issued by T. Rowe Price Exchange-Traded Funds, Inc. under NYSE Arca Rule 8.601-E); 89438 (July 31, 2020), 85 FR 47821 (August 6, 2020) (SR-NYSEArca-2020-51) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF under NYSE Arca Rule 8.601-E). See also Securities Exchange Act Release Nos. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR-CboeBZX-2019-107) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to Adopt Rule 14.11(m), Tracking Fund Shares, and to List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF); 90530 (November 30, 2020), 85 FR 78366 (December 4, 2020) (SR-CboeBZX-2020-085) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to List and Trade Shares of the Fidelity Growth Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, and Fidelity Small-Mid Cap Opportunities ETF Under Rule 14.11(m) (Tracking Fund Shares)).

"Trust"), which is organized as a business trust under the laws of the Commonwealth of Massachusetts and registered with the Commission as an open-end management investment company.⁹ Nuveen Fund Advisors, LLC will be the investment adviser to the Funds (the "Adviser"). Santa Barbara Asset Management, LLC, Nuveen Asset Management, LLC, and Winslow Capital Management, LLC will be the sub-advisers (each a "Sub-Adviser" and, collectively, the "Sub-Advisers") for the Funds. Brown Brothers Harriman will serve as the Funds' custodian and transfer agent. Nuveen Securities, LLC will act as the distributor (the "Distributor") for the Funds.

Commentary .04 to NYSE Arca Rule 8.601-E provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Actual Portfolio and/or Proxy Portfolio or has access to non-public information regarding the Investment Company's Actual Portfolio and/or Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio and/or Proxy Portfolio or changes thereto. Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2-E(j)(3); however,

⁹ The Trust is registered under the 1940 Act. On March 10, 2021 the Trust filed a registration statement on Form N-1A under the 1940 Act relating to the Funds (File No. 811-23161) (the "Registration Statement"). The Trust filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812-15199), dated February 5, 2021 (the "Application"), and amended the Application on March 16, 2021. See Investment Company Act Release No. 34243 (April 8, 2021). On May 4, 2021, the Commission issued an order (the "Exemptive Order") under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 34265, May 4, 2021). Investments made by the Funds will comply with the conditions set forth in the Application and the Exemptive Order. The description of the operation of the Funds herein is based, in part, on the Registration Statement and the Application. The Exchange will not commence trading in Shares of the Funds until the Registration Statement is effective.

Commentary .04, in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer, reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds.¹⁰ Commentary .04 is also similar to Commentary .06 to Rule 8.600-E related to Managed Fund Shares, except that Commentary .04 relates to establishment and maintenance of a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, applicable to an Investment Company's Actual Portfolio and/or Proxy Portfolio or changes thereto, and not just to the underlying portfolio, as is the case with Managed Fund Shares.

In addition, Commentary .05 to Rule 8.601-E provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio.

¹⁰ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and Sub-Advisers and their related personnel will be subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

The Adviser and Sub-Advisers are not registered as broker-dealers but are affiliated with broker-dealers. The Adviser and Sub-Advisers have implemented and will maintain a “fire wall” with respect to such broker-dealer affiliates regarding access to information concerning the composition of and/or changes to each Fund’s Actual Portfolio and/or Proxy Portfolio.

In the event (a) the Adviser and/or Sub-Adviser(s) becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a “fire wall” with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to each Fund’s Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding each Fund’s Actual Portfolio and/or Proxy Portfolio or changes thereto. Any person related to the Adviser, Sub-Adviser(s), or the Funds who makes decisions pertaining to a Fund’s Actual Portfolio or the Proxy Portfolio or has access to non-public information regarding a Fund’s Actual Portfolio and/or the Proxy Portfolio or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Fund’s Actual Portfolio and/or the Proxy Portfolio or changes thereto.

In addition, any person or entity, including any service provider for the Funds, who has access to non-public information regarding a Fund’s Actual Portfolio or the Proxy Portfolio or changes thereto, will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Fund’s Actual Portfolio and/or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity has erected and will maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to a Fund’s Actual Portfolio and/or Proxy Portfolio.

Description of the Funds

According to the Registration Statement, the Adviser will identify a Proxy Portfolio for each Fund, which is designed to closely track the daily

performance of each Fund. Each Fund’s Proxy Portfolio will be constructed to replicate the daily performance of the Fund’s Actual Portfolio through a factor model analysis of the Fund’s Actual Portfolio and will only include securities and investments in which the Funds may invest. However, while the Proxy Portfolio and the Actual Portfolio will likely hold some or many of the same securities, the Proxy Portfolio and a Fund’s Actual Portfolio may not include identical securities. The composition of each Fund’s Proxy Portfolio will be published on the Funds’ website each Business Day¹¹ and will include the following information for each portfolio holding in the Proxy Portfolio: (1) Ticker symbol; (2) CUSIP or other identifier; (3) description of holding; (4) quantity of each security or other asset held; and (5) percentage weight of the holding in the Proxy Portfolio. The Proxy Portfolio will be reconstituted daily, and the Adviser will not make intra-day changes to the Proxy Portfolio except to correct errors in the published Proxy Portfolio.

In addition to the Proxy Portfolio, the Funds’ website will publish a variety of other information metrics regarding the relative behavior of the Proxy Portfolio and the Actual Portfolio, including daily disclosure of the “Proxy Overlap”¹² and the “Tracking Error”¹³ for each Fund.

Nuveen Santa Barbara Dividend Growth ETF

The Fund’s holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.¹⁴

¹¹ “Business Day” is defined to mean any day that the Exchange is open, including any day when a Fund satisfies redemption requests as required by Section 22(e) of the 1940 Act.

¹² According to the Registration Statement, “Proxy Overlap” is the percentage weight overlap between the holdings of the Proxy Portfolio and the Actual Portfolio that formed the basis for each Fund’s calculation of NAV at the end of the prior Business Day.

¹³ According to the Registration Statement, “Tracking Error” is the standard deviation over the past three months of the daily proxy spread (*i.e.*, the difference, in percentage terms, between the Proxy Portfolio per share NAV and that of the Actual Portfolio at the end of the trading day).

¹⁴ Pursuant to the Application and Exemptive Order, the permissible investments for the Funds include only the following instruments: ETFs traded on a U.S. exchange; exchange-traded notes (“ETNs”) traded on a U.S. exchange; U.S. exchange-traded common stocks; common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares (“foreign common stocks”) in the Exchange’s Core Trading Session (normally, 9:30 a.m. to 4:00 p.m. Eastern time (“E.T.”)); U.S. exchange-traded preferred stocks; U.S. exchange-traded American Depositary Receipts (“ADRs”); U.S. exchange-traded real estate

Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund’s investment objective is to seek total return comprised of income from dividends and long-term capital appreciation. The Fund will normally invest at least 80% of the sum of its net assets in dividend-paying exchange-traded equity securities, which include common stocks and preferred securities. The Fund may invest in small-, mid-, and large-cap companies.

Nuveen Small Cap Select ETF

The Fund’s holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.¹⁵ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund’s investment objective is capital appreciation. The Fund will normally invest at least 80% of the sum of its net assets in exchange-traded common stocks of small-capitalization companies.

Nuveen Winslow Large-Cap Growth ESG ETF

The Fund’s holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.¹⁶ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a

investment trusts; U.S. exchange-traded commodity pools; U.S. exchange-traded metals trusts; U.S. exchange-traded currency trusts; and U.S. exchange-traded futures that trade contemporaneously with the Funds’ Shares. In addition, the Funds may hold cash and cash equivalents (short-term U.S. Treasury securities, government money market funds, and repurchase agreements). Pursuant to the Application and Exemptive Order, the Funds will not hold short positions or invest in derivatives other than U.S. exchange-traded futures, will not borrow for investment purposes, and will not purchase any securities that are illiquid investments at the time of purchase.

¹⁵ *Id.*

¹⁶ *Id.*

comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund's investment objective is long-term capital appreciation. The Fund will primarily invest in exchange-traded equity securities of large-cap U.S. companies that exhibit ESG characteristics, as identified by the Sub-Adviser. The Fund will normally invest at least 80% of the sum of its net assets in exchange-traded equity securities of companies with large capitalizations at the time of purchase.

Investment Restrictions

The Shares of the Funds will conform to the initial and continued listing criteria under Rule 8.601–E. The Funds' holdings will be limited to and consistent with permissible holdings as described in the Application and Exemptive Order and all requirements in the Application and Exemptive Order.¹⁷

The Funds' investments, including derivatives, will be consistent with their investment objectives and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Funds' investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.*, 2X or –3X) of the Funds' primary broad-based securities benchmark index (as defined in Form N–1A).¹⁸

Creations and Redemptions of Shares

According to the Registration Statement, the Trust will issue and sell Shares of the Funds only in specified minimum size “Creation Units” through the Distributor on a continuous basis at their NAV next determined after receipt of an order in proper form on any Business Day. The NAV of each Fund's Shares will be calculated each Business Day as of the close of regular trading on the Exchange, ordinarily 3:00 p.m. E.T. A Creation Unit will generally consist of at least 10,000 Shares.

According to the Registration Statement, Shares of the Funds will be purchased and redeemed in Creation Units. Creation Units are typically purchased and redeemed in-kind, but they may also be purchased and redeemed, in whole or in part, for cash in the Adviser's discretion. Accordingly, purchasers will generally be required to purchase Creation Units by making an in-kind deposit of specified instruments

(the “Deposit Securities”) and/or the cash value of the Deposit Securities (“Deposit Cash”), and shareholders redeeming their Shares will generally receive an in-kind transfer of Deposit Securities and/or Deposit Cash. The names and quantities of the instruments that constitute the Deposit Securities will be the same as a Fund's Proxy Portfolio, except to the extent purchases and redemptions are made entirely or in part on a cash basis.

Creation Units of the Funds may be purchased and/or redeemed entirely for cash in the Adviser's discretion. When full or partial cash purchases or redemptions of Creation Units are available or specified for the Funds, they will be effected in essentially the same manner as in-kind purchases or redemptions thereof. The Funds may determine, upon receiving a purchase or redemption order from an Authorized Participant, to have the purchase or redemption, as applicable, be made entirely or in part in cash.¹⁹

If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Securities and/or Deposit Cash (together, the “Basket”), the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the “Cash Component” or “Cash Redemption Component”).

Each Business Day, prior to the opening of trading on the Exchange, each Fund will publish the names and quantities of the instruments comprising the Basket (*i.e.*, the Deposit Securities and/or the Deposit Cash), as well as the estimated Cash Component and Cash Redemption Component (if any), for that day through the National Securities Clearing Corporation or another method of public dissemination. The published Basket will apply until a new Basket is announced on the following Business Day, and there will be no intra-day changes to the Basket except to correct errors in the published Basket. The Basket will be published each Business Day regardless of whether a Fund decides to issue or redeem Creation Units entirely or in part on a cash basis.

All orders to purchase or redeem Creation Units must be placed with the Distributor by or through an Authorized Participant. Orders to purchase or redeem Creation Units will be accepted until the “Cut-Off Time,” generally 3:00 p.m. E.T. The date on which an order

to purchase or redeem Creation Units is received and accepted is referred to as the “Order Placement Date.” All Creation Unit orders must be received by the Distributor no later than the Cut-Off Time in order to receive the NAV determined on the Order Placement Date. When the Exchange closes earlier than normal, a Fund may require orders for Creation Units to be placed earlier in the Business Day.

Availability of Information

The Funds' website (www.nuveen.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. The Funds' website will include on a daily basis, per Share for each Fund, the prior Business Day's NAV and the “Closing Price” or “Bid/Ask Price,”²⁰ and a calculation of the premium/discount of the Closing Price or Bid/Ask Price against such NAV.²¹ The Adviser has represented that the Funds' website will also provide: (1) Any other information regarding premiums/discounts as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended, and (2) any information regarding the bid/ask spread for each Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended. The Funds' website also will disclose the information required under Rule 8.601–E(c)(3).²² The website and information will be publicly available at no charge.

The identity and quantity of investments in the Proxy Portfolio for each Fund will be publicly available on the Funds' website before the

²⁰ The records relating to Bid/Ask Prices will be retained by the Funds or their service providers. The “Bid/Ask Price” is the midpoint of the highest bid and lowest offer based upon the National Best Bid and Offer as of the time of calculation of each Fund's NAV. The “National Best Bid and Offer” is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor. The “Closing Price” of Shares is the official closing price of the Shares on the Exchange.

²¹ The “premium/discount” refers to the premium or discount to the NAV at the end of a trading day and will be calculated based on the last Bid/Ask Price or the Closing Price on a given trading day.

²² See note 4, *supra*. Rule 8.601–E (c)(3) provides that the website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the 1940 Act applicable to such series, including the following, to the extent applicable:

- (i) Ticker symbol;
- (ii) CUSIP or other identifier;
- (iii) Description of holding;
- (iv) Quantity of each security or other asset held; and
- (v) Percentage weighting of the holding in the portfolio.

¹⁷ *Id.*

¹⁸ The Funds' broad-based securities benchmark index will be identified in a future amendment to its Registration Statement following the Funds' first full calendar year of performance.

¹⁹ The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash on any given day, such transactions will be effected in the same manner for all Authorized Participants placing trades with the Funds on that day.

commencement of trading in Shares on each Business Day. The website will also include information relating to the Proxy Overlap and Tracking Error for each Fund, as discussed above.

Typical mutual fund-style annual, semi-annual and quarterly disclosures contained in the Funds' Commission filings will be provided on the Funds' website on a current basis.²³ Thus, each Fund will publish the portfolio contents of its Actual Portfolio on a periodic basis, and no less than 60 days after the end of every fiscal quarter.

Investors can also obtain the Funds' SAI, Shareholder Reports, Form N-CSR, N-PORT, and Form N-CEN. The prospectus, SAI, and Shareholder Reports are available free upon request, and those documents and the Form N-CSR, N-PORT, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website. The Exchange also notes that pursuant to the Application, the Funds must comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information.

Information regarding the market price of Shares and trading volume in Shares, will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the Consolidated Tape Association ("CTA") high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Quotation and last sale information for futures contracts will be available from the exchanges on which they trade. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, subscription services and/or pricing services.

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 of a Fund.²⁴ Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601-E(d)(2)(D), which sets forth circumstances under which Shares of a Fund will be halted.

Specifically, Rule 8.601-E(d)(2)(D) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If the Exchange becomes aware that the NAV, Proxy Portfolio, or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio, or Actual Portfolio is available to all market participants at the same time.

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. Shares will trade on the NYSE Arca Marketplace in all trading sessions in accordance with NYSE Arca Rule 7.34-E(a). As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601-E. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the

Exchange. In addition, pursuant to Rule 8.601-E(d)(1)(B), the Exchange, prior to commencement of trading in the Shares, will obtain a representation from the Trust that the NAV per Share of each Fund will be calculated daily and that the NAV, Proxy Portfolio, and the Actual Portfolio for each Fund will be made available to all market participants at the same time.

With respect to Active Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and the Financial Industry Regulatory Authority, Inc. ("FINRA") will continue to monitor Exchange members for compliance with such requirements.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.²⁵ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and underlying exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain

²³ See note 7, *supra*.

²⁴ See NYSE Arca Rule 7.12-E.

²⁵ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

information regarding trading in such securities and underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁶

The Adviser will make available daily to FINRA and the Exchange the Actual Portfolio of each Fund, upon request, in order to facilitate the performance of the surveillances referred to above.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Commentary .03 to NYSE Arca Rule 8.601-E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of Rule 8.601-E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the issuer of a series of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601-E. The Exchange notes that Commentary .01 to Rule 8.601-E requires an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601-E. In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable

exemptive and no-action relief. As part of its surveillance procedures, the Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601-E.

With respect to the Funds, all statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. The Exchange will obtain a representation from the Trust, prior to commencement of trading in the Shares of the Funds, that it will advise the Exchange of any failure by the Funds to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.²⁹

With respect to the proposed listing and trading of Shares of the Funds, 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 and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.601-E.

The Funds' holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.³⁰

²⁷ 15 U.S.C. 78f(b).

²⁸ 15 U.S.C. 78f(b)(5).

²⁹ The Exchange represents that, for initial and continued listing, the Funds will be in compliance with Rule 10A-3 under the Act, as provided by NYSE Arca Rule 5.3-E.

³⁰ See note 14, *supra*.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and underlying exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Any foreign common stocks held by the Funds will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The daily dissemination of the identity and quantity of Proxy Portfolio component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the Shares' Bid/Ask Price and NAV.

The Funds' investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Funds' investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.*, 2X or -3X) of the Funds' primary broad-based securities benchmark index (as defined in Form N-1A).

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Trust that the NAV per Share of each Fund will be calculated daily and that the NAV, Proxy Portfolio, and Actual Portfolio for each Fund will be made available to all market participants at the same time. Investors can obtain the Funds' SAI, shareholder reports, and its Form N-CSR, Form N-PORT, and Form N-CEN. The Funds' SAI and shareholder reports will be available free upon request from the Funds, and those documents and the Form N-CSR, Form N-PORT, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website.

Commentary .03 to NYSE Arca Rule 8.601-E provides that the Exchange will

²⁶ For a list of the current members of ISG, see www.isgportal.org.

implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares. With respect to the Funds, the Adviser will make available daily to FINRA and the Exchange the portfolio holdings of each Fund upon request in order to facilitate the performance of the surveillances referred to above.

The Exchange will utilize its existing procedures to monitor compliance with the requirements of Rule 8.601–E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the Trust, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601–E. The Exchange notes that Commentary .01 to Rule 8.601–E requires the issuer of Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601–E. In addition, the Exchange will require the issuer to represent that it will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. The Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601–E.

In addition, with respect to the Funds, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the CTA high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Quotation and

last sale information for futures contracts will be available from the exchanges on which they trade. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, subscription services and/or pricing services.

The website for the Funds will include a form of the prospectus that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of a Fund will be halted. In addition, as noted above, investors will have ready access to the Proxy Portfolio and quotation and last sale information for the Shares. The identity and quantity of investments in the Proxy Portfolio will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day. The Shares will conform to the initial and continued listing criteria under Rule 8.601–E.³¹

The Funds' holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.³² Any foreign common stocks held by the Funds will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The components of each Fund's Actual Portfolio will (a) be listed on an exchange and the primary trading session of such exchange will trade synchronously with the Exchange's Core Trading Session, as defined in Rule 7.34–E(a); (b) with respect to exchange-traded futures, be listed on a U.S. futures exchange; or (c) consist of cash and cash equivalents.

The proposed rule change is designed to perfect the mechanism of a free and

open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange will obtain a representation from the Adviser, prior to commencement of trading in the Shares of the Funds, that it will advise the Exchange of any failure by the Funds to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Funds are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading of additional actively-managed ETFs that have characteristics different from existing actively-managed and index ETFs and would introduce additional competition among various ETF products to the benefit of investors.

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

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

³¹ See note 4, *supra*.

³² See note 14, *supra*.

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act³³ and Rule 19b-4(f)(6) thereunder.³⁴

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)³⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the Commission has previously approved proposed rule changes to permit listing and trading on the Exchange of Active Proxy Portfolio Shares similar to the Funds.³⁶ The Exchange also states that the Commission has previously issued a notice of filing and immediate effectiveness for a proposed rule change relating to the proposed listing on a national securities exchange of other issues of Active Proxy Portfolio Shares similar to the Funds.³⁷ For these reasons, the Commission 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 30-day operative delay and designates the proposed rule change operative upon filing.³⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2021-46 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-2021-46. 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-2021-46 and should be submitted on or before June 30, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-12029 Filed 6-8-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-141, OMB Control No. 3235-0249]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available from: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Extension:

Rule 12f-3

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 12f-3 (17 CFR 240.12f-3), under the Securities Exchange Act of 1934 ("Act") (15 U.S.C. 78a *et seq.*).

Rule 12f-3 ("Rule"), which was originally adopted in 1955 pursuant to Sections 12(f) and 23(a) of the Act, and as further modified in 1995, sets forth the requirements to submit an application to the Commission for termination or suspension of unlisted trading privileges in a security, as contemplated under Section 12(f)(4) of the Act. In addition to requiring that one copy of the application be filed with the Commission, the Rule requires that the application contain specified information. Under the Rule, an application to suspend or terminate unlisted trading privileges must provide, among other things, the name of the applicant; a brief statement of the applicant's interest in the question of termination or suspension of such unlisted trading privileges; the title of the security; the name of the issuer; certain information regarding the size of the class of security, the public trading volume and price history in the security for specified time periods on the subject exchange and a statement indicating that the applicant has provided a copy of such application to the exchange from which the suspension or termination of unlisted trading privileges are sought, and to any other exchange on which the security is listed or admitted to unlisted trading privileges.

The information required to be included in applications submitted pursuant to Rule 12f-3, is intended to provide the Commission with sufficient information to make the necessary findings under the Act to terminate or

³³ 15 U.S.C. 78s(b)(3)(A).

³⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁵ 17 CFR 240.19b-4(f)(6)(iii).

³⁶ See *supra* note 8.

³⁷ See *id.*

³⁸ 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).

³⁹ 17 CFR 200.30-3(a)(12).

suspend by order the unlisted trading privileges granted a security on a national securities exchange. Without the Rule, the Commission would be unable to fulfill these statutory responsibilities.

The burden of complying with Rule 12f-3 arises when a potential respondent, having a demonstrable bona fide interest in the question of termination or suspension of the unlisted trading privileges of a security, determines to seek such termination or suspension. The staff estimates that each such application to terminate or suspend unlisted trading privileges requires approximately one hour to complete. Thus each potential respondent would incur on average one burden hour in complying with the Rule.

The Commission staff estimates that there could be as many as 18 responses annually for an aggregate burden for all respondents of 18 hours. Each respondent's related internal cost of compliance for Rule 12f-3 would be \$221.00, or, the cost of one hour of professional work of a paralegal needed to complete the application. The total annual internal cost of compliance for all potential respondents, therefore, is \$3,978.00 (18 responses $\times$ \$221.00/response).

Compliance with the application requirements of Rule 12f-3 is mandatory, though the filing of such applications is undertaken voluntarily. Rule 12f-3 does not have a record retention requirement *per se*. However, responses made pursuant to Rule 12f-3 are subject to the recordkeeping requirements of Rules 17a-3 and 17a-4 of the Act. Information received in response to Rule 12f-3 shall not be kept confidential; the information collected is public information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) www.reginfo.gov/public/do/PRAMain and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE,

Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: June 4, 2021.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-12103 Filed 6-8-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-428, OMB Control No. 3235-0478]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Extension:
Rule 11a1-1(T)

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 11a1-1(T) (17 CFR 240.11a1-1(T)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act").

On January 27, 1976, the Commission adopted Rule 11a1-1(T) to exempt certain exempt transactions of exchange members for their own accounts that would otherwise be prohibited under Section 11(a) of the Exchange Act. The Rule provides that a member's proprietary order may be executed on the exchange of which the trader is a member, if, among other things: (1) The member discloses that a bid or offer for its account is for its account to any member with whom such bid or offer is placed or to whom it is communicated; (2) any such member through whom that bid or offer is communicated discloses to others participating in effecting the order that it is for the account of a member; and (3) immediately before executing the order, a member (other than a specialist in such security) presenting any order for the account of a member on the exchange clearly announces or otherwise indicates to the specialist and to other members then present that he is presenting an order for the account of a member.

Without these requirements, it would not be possible for the Commission to monitor its mandate under the Exchange

Act to promote fair and orderly markets and ensure that exchange members have, as the principle purpose of their exchange memberships, the conduct of a public securities business.

There are approximately 538 respondents that require an aggregate total of approximately 15 hours to comply with this Rule. Each of these approximately 538 respondents makes an estimated 20 annual responses, for an aggregate of 10,760 responses per year. Each response takes approximately 5 seconds to complete. Thus, the total compliance burden per year is approximately 15 hours (10,760 $\times$ 5 seconds/60 seconds per minute/60 minutes per hour = 15 hours). The approximate internal cost of compliance per hour is \$355, resulting in a total internal cost of compliance of approximately \$5,325 per year (15 hours $\times$ \$355).

Compliance with Rule 11a-1(T) is necessary for exchange members to make transactions for their own accounts under a specific exemption from the general prohibition of such transactions under Section 11(a) of the Exchange Act. Compliance with Rule 11a-1(T) does not involve the collection of confidential information. Rule 11a-1(T) does not have a record retention requirement *per se*. However, responses made pursuant to Rule 11a-1(T) may be subject to the recordkeeping requirements of Rules 17a-3 and 17a-4.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) www.reginfo.gov/public/do/PRAMain and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: June 4, 2021.

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Extension:

Rule 12d1-1, SEC File No. 270-526, OMB Control No. 3235-0584

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the “Commission”) has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

An investment company (“fund”) is generally limited in the amount of securities the fund (“acquiring fund”) can acquire from another fund (“acquired fund”). Section 12(d) of the Investment Company Act of 1940 (the “Investment Company Act” or “Act”)¹ provides that a registered fund (and companies it controls) cannot:

- Acquire more than three percent of another fund’s securities;
- invest more than five percent of its own assets in another fund; or
- invest more than ten percent of its own assets in other funds in the aggregate.²

In addition, a registered open-end fund, its principal underwriter, and any registered broker or dealer cannot sell that fund’s shares to another fund if, as a result:

- The acquiring fund (and any companies it controls) owns more than three percent of the acquired fund’s stock; or
- all acquiring funds (and companies they control) in the aggregate own more than ten percent of the acquired fund’s stock.³

Rule 12d1-1 under the Act provides an exemption from these limitations for “cash sweep” arrangements in which a fund invests all or a portion of its available cash in a money market fund rather than directly in short-term instruments.⁴ An acquiring fund relying on the exemption may not pay a sales load, distribution fee, or service fee on acquired fund shares, or if it does, the

acquiring fund’s investment adviser must waive a sufficient amount of its advisory fee to offset the cost of the loads or distribution fees.⁵ The acquired fund may be a fund in the same fund complex or in a different fund complex. In addition to providing an exemption from section 12(d)(1) of the Act, the rule provides exemptions from section 17(a) of the Act and rule 17d-1 thereunder, which restrict a fund’s ability to enter into transactions and joint arrangements with affiliated persons.⁶ These provisions would otherwise prohibit an acquiring fund from investing in a money market fund in the same fund complex,⁷ and prohibit a fund that acquires five percent or more of the securities of a money market fund in another fund complex from making any additional investments in the money market fund.⁸

The rule also permits a registered fund to rely on the exemption to invest in an unregistered money market fund that limits its investments to those in which a registered money market fund may invest under rule 2a-7 under the Act, and undertakes to comply with all the other provisions of rule 2a-7.⁹ In addition, the acquiring fund must reasonably believe that the unregistered money market fund (i) operates in compliance with rule 2a-7, (ii) complies with sections 17(a), (d), (e), 18, and 22(e) of the Act¹⁰ as if it were a registered open-end fund, (iii) has adopted procedures designed to ensure that it complies with these statutory provisions, (iv) maintains the records required by rules 31a-1(b)(1), 31a-1(b)(2)(ii), 31a-1(b)(2)(iv), and 31a-

1(b)(9);¹¹ and (v) preserves permanently, the first two years in an easily accessible place, all books and records required to be made under these rules.

Rule 2a-7 contains certain collection of information requirements. An unregistered money market fund that complies with rule 2a-7 would be subject to these collection of information requirements. In addition, the recordkeeping requirements under rule 31a-1 with which the acquiring fund reasonably believes the unregistered money market fund complies are collections of information for the unregistered money market fund. The adoption of procedures by unregistered money market funds to ensure that they comply with sections 17(a), (d), (e), 18, and 22(e) of the Act also constitute collections of information. By allowing funds to invest in registered and unregistered money market funds, rule 12d1-1 is intended to provide funds greater options for cash management. In order for a registered fund to rely on the exemption to invest in an unregistered money market fund, the unregistered money market fund must comply with certain collection of information requirements for registered money market funds. These requirements are intended to ensure that the unregistered money market fund has established procedures for collecting the information necessary to make adequate credit reviews of securities in its portfolio, as well as other recordkeeping requirements that will assist the acquiring fund in overseeing the unregistered money market fund (and Commission staff in its examination of the unregistered money market fund’s adviser).

The number of unregistered money market funds that are affected by rule 12d1-1 is an estimate based on the number of private liquidity funds reported on Form PF as of the fourth calendar quarter 2019.¹² The hour burden estimates for the condition that an unregistered money market fund comply with rule 2a-7 are based on the burden hours included in the Commission’s 2019 PRA extension regarding rule 2a-7.¹³ However, we

⁵ See rule 12d1-1(b)(1).

⁶ See 15 U.S.C. 80a-17(a), 15 U.S.C. 80a-17(d); 17 CFR 270.17d-1.

⁷ An affiliated person of a fund includes any person directly or indirectly controlling, controlled by, or under common control with such other person. See 15 U.S.C. 80a-2(a)(3) (definition of “affiliated person”). Most funds today are organized by an investment adviser that advises or provides administrative services to other funds in the same complex. Funds in a fund complex are generally under common control of an investment adviser or other person exercising a controlling influence over the management or policies of the funds. See 15 U.S.C. 80a-2(a)(9) (definition of “control”). Not all advisers control funds they advise. The determination of whether a fund is under the control of its adviser, officers, or directors depends on all the relevant facts and circumstances. See Investment Company Mergers, Investment Company Act Release No. 25259 (Nov. 8, 2001) [66 FR 57602 (Nov. 15, 2001)], at n.11. To the extent that an acquiring fund in a fund complex is under common control with a money market fund in the same complex, the funds would rely on the rule’s exemptions from section 17(a) and rule 17d-1.

⁸ See 15 U.S.C. 80a-2(a)(3)(A), (B).

⁹ See 17 CFR 270.2a-7.

¹⁰ See 15 U.S.C. 80a-17(a), 15 U.S.C. 80a-17(d), 15 U.S.C. 80a-17(e), 15 U.S.C. 80a-18, 15 U.S.C. 80a-22(e).

¹¹ See 17 CFR 270.31a-1(b)(1), 17 CFR 270.31a-1(b)(2)(ii), 17 CFR 270.31a-1(b)(2)(iv), 17 CFR 270.31a-1(b)(9).

¹² See the U.S. Securities and Exchange Commission’s Division of Investment Management—Analytics Office Private Funds Statistics, Fourth Calendar Quarter (Oct. 2, 2020) available at <https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2019-q4.pdf>.

¹³ See Securities and Exchange Commission, Request for OMB Approval of Extension for Approved Collection for Rule 2a-7 under the

¹ See 15 U.S.C. 80a.

² See 15 U.S.C. 80a-12(d)(1)(A). If an acquiring fund is not registered, these limitations apply only with respect to the acquiring fund’s acquisition of registered funds.

³ See 15 U.S.C. 80a-12(d)(1)(B).

⁴ See 17 CFR 270.12d1-1.

have updated the estimated costs associated using the following methodology:

- *For professional personnel:* SIFMA's *Management & Professional Earnings in the Securities Industry 2013*, modified for 2020 by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead;

- *For a fund board of directors:* SIFMA data does not include a board of directors. For board time, Commission staff currently uses a cost of \$4,770 per

hour, which was last adjusted for inflation in 2019. This estimate assumes an average of nine board members per year; and

- *For clerical personnel:* SIFMA's *Office Salaries in the Securities Industry 2013*, modified for 2020 by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

The estimated average burden hours in this collection of information are made solely for purposes of the Paperwork Reduction Act and are not

derived from a quantitative, comprehensive or even representative survey or study of the burdens associated with Commission rules and forms.

The estimated burden of information collection for rule 2a-7 is set forth in Table 1 below. We use these estimated burdens for registered money market funds to extrapolate the information collection burdens for unregistered money market funds under rule 12d1-1 in Table 2 below.

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Table 1: Rule 2a-7 burden of information collection for registered money market funds¹⁴

	Estimated Responses	Estimated Burden Hours	Estimated Cost Burden
Record of credit risk analyses, and determination regarding adjustable rate securities, asset backed securities, securities subject to a demand feature or guarantee, and counterparties to repurchase agreements			
	85 responses annually for each of 433 funds ¹⁵	680 burden hours of professional (business analyst or portfolio manager) time per fund x 433	\$232 per hour (intermediate business analyst) + \$332 per hour (senior portfolio manager) \$564 ÷ 2 = \$282 median weighted average per hour of professional time \$282 x 294,440 (hours) =
Total	36,805 estimated responses annually	294,440 estimated burden hours	\$83,032,080 estimated cost burden

¹⁴Investment Company Act of 1940 (OMB Control No. 3235-0268) (approved May 28, 2019) (the "2019 rule 2a-7 PRA extension"). The 2019 rule 2a-7 PRA

extension was the most recent rule 2a-7 submission that includes certain estimates with respect to aggregate annual hour and cost burdens for

collections of information for registered money market funds.

	Estimated Responses	Estimated Burden Hours	Estimated Cost Burden
Fund's website disclosures including portfolio holding information, daily and weekly liquid assets, net flow, daily current NAV, financial support received by the fund, the imposition and removal of liquidity fees, and the suspension and resumption of fund redemptions			
	<i>Disclosure of Portfolio Information</i> 12 months x 433 funds = 5,196 responses per year <i>Disclosure of Daily and Weekly Liquid Assets and Net Shareholder Flow</i> 252 business days x 433 funds = 109,116 responses per year	<i>Disclosure of Portfolio Information</i> 12 hours (webmaster) annually x 433 funds = 5,196 hours per year + 24 hours (webmaster) initial burden for each new fund x 10 new funds = 240 one-time hours = 5,436 annual aggregate one-time and recurring burdens for the disclosure of portfolio holdings information <i>Disclosure of Daily and Weekly Liquid Assets and Net Shareholder Flow</i> 31.5 hours (senior systems analyst/senior programmer) + 4.5 hours (compliance manager/compliance attorney) = 36 hours x 433 funds = 15,588 hours per year + 70 hours (blended time for a compliance manager and a compliance attorney) x 10 new funds = 700 one-time hours	<i>Disclosure of Portfolio Information</i> 5,196 hours for 433 funds x \$250 (per hour for a webmaster) = \$1,299,000 (for recurring internal burden labor costs) + 240 hours for 10 new funds x \$250 (per hour for a webmaster) = \$60,000 = \$1,359,000 aggregate annual one-time and recurring labor burdens for disclosure of portfolio information <i>Disclosure of Daily and Weekly Liquid Assets and Net Shareholder Flow</i> 31.5 hours x \$311 (blended rate for a senior systems analyst (\$287) and senior programmer (\$334)) = \$9,797 (per fund) + 4.5 hours x \$340 (blended rate for a compliance manager (\$312) and a compliance attorney (\$368)) = \$1,530 = \$11,327 (per fund to update the depiction of daily and weekly liquid assets and the fund's net inflow or outflow on the fund's website each business day during that year) x 433 funds = \$4,904,591 + 700 hours (aggregate total one-time burden for 10

	Estimated Responses	Estimated Burden Hours	Estimated Cost Burden
		=	new funds) x [20 hours x \$340 (blended rate for a compliance manager (\$312) and a compliance attorney (\$368))= \$6,800 + 50 hours x \$311 (blended rate for a senior systems analyst (\$287) and senior programmer (\$334) = \$15,550 = \$22,350 (internal labor cost burden for each new fund)] = \$223,500
		16,288 aggregate annual one-time and recurring burden hours for disclosure of daily and weekly liquid assets and shareholder flow	\$5,128,091 aggregate annual one-time and recurring burdens for disclosure of daily and weekly liquid assets and shareholder flow
	<i>Disclosure of Daily Current NAV</i> 252 business days x 433 funds = 109,116 responses per year	<i>Disclosure of Daily Current NAV</i> 32 hours (senior systems analyst/senior programmer) x 433 funds = 13,856 hours per year + 70 hours x 10 new funds = 700 one-time hours = 14,556 aggregate annual one-time and recurring burden hours for the disclosure of daily current NAV	<i>Disclosure of Daily Current NAV</i> 32 hours x \$311 (blended rate for a senior systems analyst (\$287) and senior programmer (\$334) = \$9,952 (annual ongoing internal labor cost burden per fund) x 433 funds = \$4,309,216 (ongoing annual burden) + 700 hours (aggregate total one-time burden for 10 new funds) x [20 hours x \$340 (blended rate for compliance manager (\$312) and a compliance attorney (\$368))= \$6,800 + 50 hours x \$311 (blended rate for a senior systems analyst (\$287) and senior programmer (\$334) = \$15,550 \$22,350 per fund x 10 new funds = \$223,500 (total one-time cost burden)] = \$4,532,716 aggregate annual one-time and recurring labor burdens for disclosure of daily and current NAV

	Estimated Responses	Estimated Burden Hours	Estimated Cost Burden
	<i>Disclosure of Financial Support Received by the Fund, the Imposition and Removal of Liquidity Fees, and the Suspension and Resumption of Fund Redemptions</i> 11 responses per year	<i>Disclosure of Financial Support Received by the Fund, the Imposition and Removal of Liquidity Fees, and the Suspension and Resumption of Fund Redemptions</i> 1 additional burden hour each time a fund updates its website to include new disclosure about the provision of financial support to fund x 10 reports per year = 10 hours per year + 1 burden hour for website updates x 1 estimated instance of a fund updating its website regarding the imposition and removal of liquidity fees, and suspension and resumption of fund redemptions = 1 hour per year = 11 aggregate annual one-time and recurring burden for the disclosure of financial support received by the fund, the imposition and removal of liquidity fees, and the suspension and resumption of fund redemptions	<i>Disclosure of Financial Support Received by the Fund, the Imposition and Removal of Liquidity Fees, and the Suspension and Resumption of Fund Redemptions</i> 10 reports per fund x 1 hour per website update x \$250 per hour for a webmaster (internal cost burden per fund to include new disclosure) = \$2,500 (aggregate internal labor cost burden for disclosure of financial support provided to funds) + 1 hour (annual aggregate burden) x \$250 per hour for a webmaster = \$250 (aggregate internal labor cost burden) = \$2,750 aggregate annual one-time and recurring burden for the disclosure of financial support received by the fund, the imposition and removal of liquidity fees, and the suspension and resumption of fund redemptions
	<i>Total Estimated Responses Relating to Website Disclosure</i> 5,196 + 109,116 + 109,116 + 11 =	<i>Total Estimated Burden Hours Relating to Website Disclosure</i> 5,436 + 16,288 + 14,556 + 11 =	<i>Total Estimated Cost Burden Relating to Website Disclosure</i> \$1,359,000 + \$5,128,091 + \$4,532,716 + \$2,750 =
TOTAL	223,439 estimated responses annually	36,291 estimated burden hours	\$11,022,557 estimated cost burden
Board review of procedures and guidelines of any			

	Estimated Responses	Estimated Burden Hours	Estimated Cost Burden
investment adviser or officers to whom the fund's board has delegated responsibility under rule 2a-7 and amendment of such procedures and guidelines			
	1 response annually for each of 108 funds ¹⁶	1 hour (board time) + 4 hours (compliance and professional legal time) = 5 hours per fund 5 hours x 108 estimated responses =	1 hour x \$4770 (board time) = \$4,770 4 x \$340 (blended rate for compliance manager (\$312) and a compliance attorney (\$368)) = \$1,360 \$4,770 + \$1,360 = \$6,130 (cost per fund) \$6,130 x 108 estimated responses =
Total	108 estimated responses annually	540 estimated burden hours	\$662,040 estimated cost burden
Review, revise, and approve written procedures to stress test a fund's portfolio			
	1 response annually ¹⁷ for each of 91 fund complexes ¹⁸	1 hour of board time 5 hours of senior portfolio manager time 3 hours of risk management specialist time + 3 hours of professional <u>legal time</u> = 12 burden hours per fund complex 12 hours x 91 estimated responses =	1 hour x \$4,770 (board time) = \$4,770 5 x \$332 (Sr. portfolio manager) = \$1,660 3 x \$201 (risk management specialist) = \$603 3 x \$401 (attorney) = \$1,203 \$4,770 + \$1,660 + \$603 + \$1,203 = \$8,236 per fund complex

	Estimated Responses	Estimated Burden Hours	Estimated Cost Burden
			\$8,236 x 91 estimated responses =
Total	91 estimated responses annually	1,092 estimated burden hours	\$749,476 estimated cost burden
Reports to fund boards on the results of stress testing			
	5 responses annually for each of 91 fund complexes	5 hours senior portfolio manager time 2 hours compliance manager time 2 hours professional legal time <u>+ 1 hour paralegal time</u> = 10 hours per response	5 x \$332 (sr. portfolio manager) = \$1,660 2 x \$312 (compliance manager) = \$624 2 x \$419 (attorney) = \$838 1 x \$219 (paralegal) = \$219 \$1,660 + \$624 + \$838 + \$219 = \$3,341 per response
		10 hours x 455 responses =	\$3,341 x 455 estimated responses =
Total	455 estimated responses annually	4,550 estimated burden hours	\$1,520,155 estimated cost burden
Retail Funds Policies and Procedures			
	2 ¹⁹	12 hours (attorney time) + <u>+1 hour (board time)</u> = 13 hours per fund	12 x \$419 (attorney) = \$5,028 1 hour x \$4,770 (board time) = \$4,770 \$5,028 + \$4,770 = \$9,798 (per fund)
		13 hours x 2 estimated responses =	\$9,798 x 2 estimated responses =

	Estimated Responses	Estimated Burden Hours	Estimated Cost Burden
Total	2 estimated responses annually	26 estimated burden hours	\$19,596 estimated cost burden
Establishment of written procedures to test periodically the ability of the fund to maintain a stable NAV per share based on certain hypothetical events ("stress testing")			
	1 response annually for 10 new money market funds	3 hours board time 8 hours professional legal time 7 hours risk management specialist time + 4 hours senior risk management time = 22 hours	3 hours x \$4,770 (board time) = \$14,310 8 hours x \$419 (attorney) = \$3,352 7 hours x \$201 (risk management specialist) = \$1,407 4 hours x \$361 (sr. risk management specialist) = \$1,444 \$14,310 + \$3,352 + \$1,407 + \$1,444 = \$20,513 (per response)
		22 hours x 10 estimated responses =	\$20,513 x 10 estimated responses =
Total	10 estimated responses annually	220 estimated burden hours	\$205,130 estimated cost burden
Establishment of written procedures designed to stabilize NAV and guidelines and procedures for board delegation of authority			
	1 response annually for 10 new funds	.5 hours of board time 7.2 hours professional legal time + 7.7 hours paralegal time = 15.5 hour per response	.5 x hours x \$4,770 (board time) = \$2,385 7.2 hours x \$419 (attorney) = \$3,016.80 7.7 hours x \$219 (paralegal) = \$1,686.30 \$2,385 + \$3,016.80 + \$1,686.30 = \$7,088.10 per response
		15.5 x 10 estimated responses =	\$7,088.10 x 10 estimated responses =

	Estimated Responses	Estimated Burden Hours	Estimated Cost Burden
Total	10 estimated responses annually	155 estimated burden hours	\$70,881 estimated cost burden
Board determination – Fees and Gates			
	2 funds per year	4 hours attorney 2 hours of board time + 1 hour of fund's compliance attorney = 7 hours per fund	4 hours x \$419 (attorney) = \$1,676 2 hours x \$4,770 (board time) = \$9,540 1 x \$368 (compliance attorney) = \$368 \$1,676+\$9,540+\$368 = \$11,584 estimated cost burden per fund x 2 funds
Total	2 estimated responses annually	14 estimated burden hours	\$23,168 estimated cost burden
Written record of board determinations and actions related to failure of a security to meet certain eligibility standards or an event of default or insolvency			
	2 responses annually for 20 funds	.5 hours (professional legal time) .5 x 40 estimated responses=	.5 hour x \$419 (attorney) = \$209.50 per response \$209.50 x 40 estimated responses =
Total	40 estimated responses annually	20 estimated burden hours	\$8,380 estimated cost burden
TOTAL ESTIMATED ANNUAL BURDEN OF INFORMATION COLLECTION FOR RULE 2a-7	260,962 estimated responses annually	337,348 estimated burden hours annually	\$97,313,463 estimated cost burden annually

Based on the estimated burden of information collection for rule 2a-7 and Form PF filings, the estimated burden of

information collection for rule 12d1-1 is set forth in Table 2 below.

Table 2: Rule 12d1-1 burden of information collection burden estimates for unregistered money market funds

	Estimated Responses	Estimated Burden Hours	Estimated Cost Burden ²⁰
Record of credit risk analyses, and determination regarding adjustable rate securities, asset backed securities, securities subject to a demand feature or guarantee, and counterparties to repurchase agreements			
	85 responses annually per 41 liquidity funds ²¹	680 burden hours of professional (business analyst or portfolio manager) time per liquidity fund x 41 liquidity funds	\$232 per hour (intermediate business analyst) + \$332 per hour (senior <u>portfolio manager</u>) \$564 ÷ 2 = \$282 median weighted average per hour x

	Estimated Responses	Estimated Burden Hours	Estimated Cost Burden ²⁰
			27,880 hours =
Total	3,485 estimated responses per liquidity fund annually	27,880 estimated burden hours	\$7,862,160 estimated cost burden
Fund's website disclosures including portfolio holding information, daily and weekly liquid assets, net shareholder flow, daily current NAV, financial support received by the fund, the imposition and removal of liquidity fees, and the suspension and resumption of fund redemptions			
	<i>Disclosure of Portfolio Holdings Information</i> 12 months x 41 liquidity funds = 492 responses per year <i>Disclosure of Daily and Weekly Liquid Assets and Net Shareholder Flow</i> 252 business days x 41	<i>Disclosure of Portfolio Holdings Information</i> 12 hours (one hour per monthly filing) to update the website to include the disclosure of portfolio holdings information x 41 liquidity funds = 492 hours per year + 24 hours of webmaster time for an estimated 1 new liquidity fund²² each year to initially develop a webpage and provide monthly disclosure for the initial year = 24 one-time burden hours 516 aggregate annual one-time and recurring burden hours for the disclosure of portfolio holdings <i>Disclosure of Daily and Weekly Liquid Assets and Net Shareholder Flow</i> 36 hours ongoing annual	<i>Disclosure of Portfolio Holdings Information</i> 492 hours for 41 liquidity funds x \$250 (per hour for a webmaster) = \$123,000 (for recurring internal burden labor costs) + 24 hours for 1 new liquidity fund x \$250 (per hour for a webmaster) = \$6,000 = \$129,000 total aggregate annual one-time and recurring labor burdens for disclosure of portfolio holdings <i>Disclosure of Daily and Weekly Liquid Assets and Net Shareholder Flow</i> 31.5 hours x \$311

	Estimated Responses	Estimated Burden Hours	Estimated Cost Burden ²⁰
	liquidity funds = 10,332 per year	burden x 41 liquidity funds = 1,476 hours per year + 70 hours for each new liquidity fund x 1 new fund = 70 one-time hours 1,476 annual burden hours + 70 one-time burden hours = 1,546 aggregate annual recurring and one-time burden hours for disclosure of daily and weekly liquid assets and shareholder flow	(blended rate for a senior systems analyst (\$287) and senior programmer (\$334) = \$9,797 (per liquidity fund) + 4.5 hours x \$340 (blended rate for compliance manager (\$312) and a compliance attorney (\$368)) = \$1,530 = \$11,327 (per fund to update the depiction of daily and weekly liquid assets and the liquidity fund's net inflow or outflow on the liquidity fund's website each business day during that year) x 41 liquidity funds = \$464,407 recurring aggregate annual cost burdens for the disclosure of daily and weekly liquid assets and weekly liquid assets and the fund's net inflow or outflow on the liquidity fund's website each business day during the year + 70 hours aggregate total one-time burden for 1 new fund) x [20 hours x \$340 (blended rate for compliance manager (\$312) and a compliance attorney (\$368))= \$6,800 + 50 hours x \$311 (blended rate for a senior systems analyst (\$287) and senior programmer (\$334) = \$15,550 = \$22,350 (internal labor cost burden for each new fund)] = \$1,564,500 = \$2,028,907 aggregate annual recurring and one-time cost burdens for disclosure of daily and weekly liquid assets and shareholder flow

	Estimated Responses	Estimated Burden Hours	Estimated Cost Burden ²⁰
	<i>Disclosure of Daily Current NAV</i> 252 business days x 41 liquidity funds = 10,332 per year	<i>Disclosure of Daily Current NAV</i> 32 hours x 41 liquidity funds = 1,312 hours per year + 70 one-time burden hours for each new liquidity fund x 1 new liquidity fund = 70 one-time burden hours 1,312 annual burden hours + 70 one-time burden hours = 1,382 aggregate annual recurring and one-time burden hours for disclosure of daily current NAV	<i>Disclosure of Daily Current NAV</i> 32 hours x \$311 (blended rate for a senior systems analyst (\$287) and senior programmer (\$334)) = \$9,952 (annual ongoing internal labor cost burden per fund) x 41 funds = \$408,932 ongoing annual cost burdens + 70 hours (aggregate total one-time burden for 1 new liquidity) x [20 hours x \$340 (blended rate for compliance manager (\$312) and a compliance attorney (\$368)) = \$6,800 + 50 hours x \$311 (blended rate for a senior systems analyst (\$287) and senior programmer (\$334)) = \$15,550 = \$22,350 (internal labor cost burden for each new fund)] = \$1,564,500 \$408,932 (recurring internal cost burden) + \$1,564,500 (one-time internal labor cost burden) = \$1,973,432 aggregate annual recurring and one-time cost burdens
	<i>Disclosure of Financial Support Received by the Fund, and Imposition and Removal of Liquidity Fees, and the Suspension and Resumption of Fund Redemptions</i> Not applicable	<i>Disclosure of Financial Support Received by the Fund, and Imposition and Removal of Liquidity Fees, and the Suspension and Resumption of Fund Redemptions</i> Not applicable	<i>Disclosure of Financial Support Received by the Fund, and Imposition and Removal of Liquidity Fees, and the Suspension and Resumption of Fund Redemptions</i> Not applicable
	<i>Total Estimated Burden Hours Relating to Website Disclosure</i> 492+10,332+10,332 =	<i>Total Estimated Burden Hours Relating to Website Disclosure</i> 516 + 1,546 + 1,382 =	<i>Total Estimated Burden Hours Relating to Website Disclosure</i> \$129,000 + \$2,028,907+ \$1,973,432 =
TOTAL	21,156 estimated responses	3,444 estimated burden hours	\$4,131,339 estimated cost burden

	Estimated Responses	Estimated Burden Hours	Estimated Cost Burden ²⁰
Board review of procedures and guidelines of any investment adviser or officers to whom the fund's board has delegated responsibility under rule 2a-7 and amendment of such procedures and guidelines²³			
	1 response annually for each of 10 funds ²⁴	1 hour (board time) + 4 hours (compliance and <u>professional legal time</u>) = 5 hours 5 hours x 10 responses =	1 hour x \$4,770 (board time) = \$4,770 4 x \$340 (blended rate for compliance manager (\$312) and a compliance attorney (\$368)) = \$1,360 \$4,770 + \$1,360 = \$6,130 (cost per fund) \$6,130 x 10 estimated responses =
TOTAL	10 estimated responses	50 estimated burden hours	\$61,300 estimated cost burden
Review, revise, and approve written procedures to stress test a fund's portfolio			
	1 response annually for each of 36 fund complexes ²⁵	1 hour of board time 5 hours of senior portfolio manager time 3 hours of risk management specialist time + 3 hours of professional <u>legal time</u> =	1 hour x \$4,770 (board time) = \$4,770 5 x \$332 (Sr. portfolio manager) = \$1,660 3 x \$201 (risk management specialist) = \$603

	Estimated Responses	Estimated Burden Hours	Estimated Cost Burden ²⁰
		12 hours	3 x \$401 (attorney) = \$1,203 \$4,770 + \$1,660 + \$603 + \$1,203 = \$8,236 per liquidity fund complex 12 hours x 36 estimated responses = \$8,236 x 36 estimated responses =
TOTAL	36 estimated responses	432 estimated burden hours	\$296,496 estimated cost burden
Reports to fund boards on the results of stress testing²⁶			
	5 responses annually for each of 36 fund complexes	5 hours senior portfolio manager time 2 hours compliance manager time 2 hours professional legal time <u>+1 hour paralegal time</u> = 10 hours per response 10 hours x 180 estimated responses =	5 x \$332 (sr. portfolio manager) = \$1,660 2 x \$312 (compliance manager) = \$624 2 x \$419 (attorney) = \$838 1 x \$219 (paralegal) = \$219 \$1,660 + \$624 + \$838 + \$219 = \$3,341 per response \$3,341 x 180 estimated responses =
TOTAL	180 estimated responses	1800 estimated burden hours	\$601,380 estimated cost burden
Retail Funds Policies and Procedures²⁷			
TOTAL	Not applicable		
Establishment of written procedures to test periodically the ability of the fund to maintain a stable NAV per share based on certain hypothetical events ("stress testing")			
	1 response annually for 1 new liquidity fund	3 hours board time 8 hours professional legal time	3 hours x \$4,770 (board time) = \$14,310

	Estimated Responses	Estimated Burden Hours	Estimated Cost Burden ²⁰
		7 hours risk management specialist time +4 hours senior risk management time = 22 hours	8 hours x \$419 (attorney) = \$3,352 7 hours x \$201 (risk management specialist) = \$1,407 4 hours x \$361 (sr. risk management specialist) = \$1,444 \$14,310 + \$3,352 + \$1,407 + \$1,444 = \$20,513 (per response) \$20,513(cost) x 1 estimated response
TOTAL	1 estimated response	22 estimated burden hours	\$20,513 estimated cost burden
Establishment of written procedures designed to stabilize NAV and guidelines and procedures for board delegation of authority²⁸			
	1 response annually for 1 new liquidity fund	.5 hours board time 7.2 hours professional legal time <u>+7.8 hours paralegal time</u> = 15.5 hours	.5 hours x \$4,770 (board time) = \$2,385 7.2 hours x \$419 (attorney) = \$3,016.80 7.8 hours x \$219 (paralegal) = \$1,708.20 \$2,385 + \$3,016.80 + \$1,708.20 = \$7,110 (per response) \$7,110 x 1 estimated response =
TOTAL	1 estimated response	15.5 estimated burden hours	\$7,110 estimated cost burden
Board determination – Fees and Gates²⁹			
	2 liquidity funds per year	4 hours attorney 2 hours of board time +1 hours of fund's compliance attorney 7 hours per liquidity fund	4 hours x \$419 (attorney) = \$1,676 2 hours x \$4,770 (board time) = \$9,540 1 x \$368 (compliance

	Estimated Responses	Estimated Burden Hours	Estimated Cost Burden ²⁰
			attorney) = \$368 \$1,676+\$9,540+\$368 = \$11,584 per liquidity fund \$11,584 x 2 estimated responses =
TOTAL	2 estimated responses	14 estimated hours burden	\$23,168 estimated costs burden
Written record of board determinations and actions related to failure of a security to meet certain eligibility standards or an event of default or insolvency³⁰			
	2 estimated responses annually for 2 liquidity funds ³¹	.5 hours (professional legal time) x 4 estimated responses	.5 hour x \$419 (attorney) = \$209.50 \$209.50 x 4 estimated responses =
Total	4 estimated responses	2 estimated burden hours	\$838 estimated cost burden
TOTAL ESTIMATED BURDEN OF INFORMATION COLLECTION FOR RULE 12d1-1	24,875 estimated responses annually	33,660 estimated burden hours annually	\$13,004,304 estimated cost burden annually

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Commission staff estimates that in addition to the costs described in Table

¹⁴ The estimated responses and hour burdens shown in this chart were included in the Securities and Exchange Commission, Request for OMB Approval of Extension for Approved Collection for Rule 2a-7 under the Investment Company Act of 1940 (OMB Control No. 3235-0268) (approved May 28, 2019) (the "2019 rule 2a-7 PRA extension"). The 2019 rule 2a-7 PRA extension was the most recent rule 2a-7 submission that includes certain estimates with respect to aggregate annual hour and cost burdens for collections of information for registered money market funds.

However, the cost burdens shown in this chart have been updated. The cost burdens for professional personnel are based on SIFMA's *Management & Professional Earnings in the Securities Industry 2013*, modified for 2020 by the Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead and the cost burdens for clerical personnel are based on SIFMA's *Office Salaries in the Securities Industry 2013*, modified for 2020 by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. However, SIFMA data does not include a board of directors. For board time, Commission staff currently uses a cost of \$4,770 per hour, which was last adjusted for inflation in 2019. This estimate assumes an average of nine board members per year.

¹⁵ The number of funds based on Form N-MFP filings for the month ended September 30, 2018 and used in the 2019 rule 2a-7 PRA extension.

¹⁶ For purposes of the 2019 rule 2a-7 PRA extension, we assumed that on average 25% (433 funds x .25 = 108 funds) of money market funds would review and update their procedures on annual basis).

¹⁷ We have not amortized the one-time hour and cost burdens figures associated with new funds, because we estimated there would be 10 new funds each year. Therefore, the burden would occur each year instead of occurring over a three-year period. We have done this throughout this PRA.

¹⁸ Commission staff estimates that there are 91 fund complexes subject to rule 2a-7. This estimate is based on Form N-MEP filings with the Commission for the month ended September 30, 2018.

¹⁹ We estimated that approximately two new money market funds would seek to qualify as retail money market funds under rule 2a-7 and therefore be required to adopt written policies and procedures reasonably designed to limit beneficial owners to natural persons.

For purposes of the 2019 rule 2a-7 PRA extension, Form N-MFP data reflects that of the 30 new money market funds created between April of 2015 through September 2018, only six new money market funds elected to be retail funds—or approximately two per year ((6 funds/42 months) x 12 months). Based on these figures, we estimated that two new money market fund per year would elect to be a retail fund.

²⁰ The cost burdens shown in this chart for professional personnel are based on SIFMA's

Management & Professional Earnings in the Securities Industry 2013, modified for 2020 by the Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead and the cost burdens for clerical personnel are based on SIFMA's *Office Salaries in the Securities Industry 2013*, modified for 2020 by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. However, SIFMA data does not include a board of directors. For board time, Commission staff currently uses a cost of \$4,770 per hour, which was last adjusted for inflation in 2019. This estimate assumes an average of nine board members per year.

We use these estimated burdens for registered money market funds to extrapolate the information collection burdens for unregistered money market funds under rule 12d1-1 in this Table 2.

²¹ The number of liquidity funds is based on the following: 65 x the percentage of liquidity funds that are at least partially in compliance with the risk-limiting provisions of rule 2a-7 and used in the most recent supporting statement for rule 2a-7 100 - 37.2) = 62.8%. The result (rounded up to a whole number) is 41 liquidity funds. The number of liquidity funds is based on the U.S. Securities and Exchange Commission's Division of Investment Management—Analytics Office Private Funds Statistics, Fourth Calendar Quarter (Oct. 2, 2020) available at <https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2019-q4.pdf>.

2 above, unregistered money market funds will incur costs to preserve records, as required under rule 2a-7. These costs will vary significantly for individual funds, depending on the amount of assets under fund management and whether the fund preserves its records in a storage facility in hard copy or has developed and maintains a computer system to create and preserve compliance records. In the 2019 rule 2a-7 PRA extension, Commission staff estimated that the amount an individual money market fund may spend ranges from \$100 per year to \$300,000. We have no reason to believe the range is different for unregistered money market funds. Based on Form PF data as of the fourth calendar quarter 2019, liquidity funds have \$294 billion in gross asset value.³² The Commission does not have specific information about the proportion of assets held in small, medium-sized, or large unregistered money market funds. Because liquidity funds are often used as cash management vehicles, the staff estimates that each private liquidity

fund is a “large” fund (*i.e.*, more than \$1 billion in assets under management). Based on a cost of \$0.0000009 per dollar of assets under management (for large funds),³³ the staff estimates compliance with rule 2a-7 for these unregistered money market funds totals \$264,600 annually.³⁴

Consistent with estimates made in the rule 2a-7 submission, Commission staff estimates that unregistered money market funds also incur capital costs to create computer programs for maintaining and preserving compliance records for rule 2a-7 of \$0.0000132 per dollar of assets under management. Based on the assets under management figures described above, staff estimates annual capital costs for all unregistered money market funds of \$3.88 million.³⁵

Commission staff further estimates that, even absent the requirements of rule 2a-7, money market funds would spend at least half of the amounts described above for record preservation (\$132,300) and for capital costs (\$1.94 million). Commission staff concludes that the aggregate annual costs of compliance with the rule are \$132,300 for record preservation and \$1.94 million for capital costs.

The collections of information required for unregistered money market funds by rule 12d1-1 are necessary in order for acquiring funds to be able to obtain the benefits described above. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control OMB number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) www.reginfo.gov/public/do/PRAMain and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE,

Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: June 4, 2021.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-12104 Filed 6-8-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92103; File No. SR-BX-2021-025]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BX Options 7, Section 1, “General Provisions” and Section 2, “BX Options Market-Fees and Rebates”

June 3, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 24, 2021, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BX Options 7, Section 1, “General Provisions” and Section 2, “BX Options Market-Fees and Rebates.”

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

²² The number of new unregistered money market funds is estimated from 2018–2019 historical Form PF filings by liquidity fund advisers. See Securities and Exchange Commission’s Division of Investment Management—Analytics Office Private Funds Statistics, Fourth Calendar Quarter (Oct. 2, 2020) available at <https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2019-q4.pdf>.

²³ We recognize that in many cases the adviser to an unregistered money market fund typically performs the function of the fund’s board. *Money Market Fund Reform; Amendments to Form PF* Investment Company Act Rel. No. 31166 (Jul. 23, 2014), 79 FR 47735, 47809 (Aug. 14, 2014).

²⁴ For purposes of this PRA extension, we assumed that on average 25% (41 funds × .25 = approximately 10 funds) of liquidity funds would review and update their procedures on annual basis.

²⁵ This number has been derived from the number of advisers to liquidity funds. See U.S. Securities and Exchange Commission, Division of Investment Management, Analytics Office, Private Fund Statistics, Fourth Quarter 2019 (Oct. 2, 2020), Table 2.

²⁶ See *supra* note 23.

²⁷ There are no liquidity funds of this type; liquidity funds only are offered to qualified investors.

²⁸ See *supra* note 23.

²⁹ *Id.*

³⁰ *Id.*

³¹ In the context of registered money market funds, we have previously estimated an average of approximately 2 occurrences for 20 funds each year; however, this number may vary significantly in any particular year. For purposes of this PRA extension, we assumed there would be same proportion of unregistered money market funds experiencing events of default or solvency each year. (20/433 registered money market funds = approximately 5%. 5% × 41 liquidity funds = approximately 2 liquidity funds.)

³² See U.S. Securities and Exchange Commission, Division of Investment Management, Analytics Office, Private Fund Statistics, Fourth Quarter 2019 (Oct. 2, 2020), Table 3.

³³ The recordkeeping cost estimates are \$0.0051295 per dollar of assets under management for small funds, and \$0.0005041 per dollar of assets under management for medium-sized funds. The cost estimates are the same as those used in the most recently approved rule 2a-7 submission.

³⁴ This estimate is based on the following calculation: (\$294 billion × \$0.0000009) = \$264,600 for large funds.

³⁵ This estimate is based on the following calculation: (\$294 billion × 0.0000132) = \$3.88 million.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BX's Pricing Schedule at BX Options 7, Section 1, "General Provisions" and Section 2, "BX Options Market-Fees and Rebates." Each change will be described below.

Options 7, Section 1

The Exchange proposes to relocate rule text, without change, related to the Removal of Days for Purposes of Pricing Tiers within Options 7, Section 2(6) into Options 7, Section 1, General Provisions. This proposed change is non-substantive. The Exchange believes that this rule text is more appropriate for Section 1 which describes general provisions.

Options 7, Section 2

The Exchange will begin offering its Block Order Mechanism³ and Customer Cross Order⁴ on June 1, 2021.⁵ The Exchange proposes to assess no fees and pay no rebates for orders entered into the Block Order Mechanism or Customer Cross Orders. Specifically, the Exchange proposes to create a header within Options 7, Section 2(6) [*sic*] which states, "Block Order Mechanism per Options 3, Section 11 and Customer Cross Orders per to Options 3, Section 12" and note that "Orders executed in the Block Order Mechanism and Customer Cross Orders are not subject to fees or rebates."

Also, the Exchange proposes to amend the rule text within Options 7, Section 2(1), which directs Participants to applicable pricing, to also provide that "Orders executed in the Block Order Mechanism and Customer Cross Orders are not subject to the pricing in Options 7, Section 2(1), instead, these orders are subject to the pricing within Options 7, Section 2(6)." The addition

of this rule text will serve as a guidepost to Participants to easily locate the pricing for the Block Order Mechanism.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ 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 proposed changes to BX's Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options 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'. . . ."⁸

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."⁹

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. 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. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

Options 7, Section 1

The Exchange's proposal to relocate rule text related to the Removal of Days for Purposes of Pricing Tiers within Options 7, Section 2(6) into Options 7, Section 1, General Provisions, without change, is reasonable as the Exchange is simply relocating the rule text within a section which describes general provisions.

The Exchange's proposal to relocate rule text related to the Removal of Days for Purposes of Pricing Tiers within Options 7, Section 2(6) into Options 7, Section 1, General Provisions, without change, is equitable and not unfairly discriminatory as the rule text will continue to apply uniformly to all Participants.

Options 7, Section 2

The Exchange's proposal to adopt Block Order Mechanism and Customer Cross Order pricing is reasonable. On June 1, 2021, the Exchange will begin offering the Block Order Mechanism and Customer Cross Orders to Participants and assess no fees and not pay any rebates for orders entered into the Block Order Mechanism or Customer Cross Orders. The Exchange's proposal will provide Participants notification of its Block Order and Customer Cross Order pricing. The proposal to add rule text within Options 7, Section 2(1) will serve as a guidepost to Participants to easily locate the pricing for the Block Order Mechanism and Customer Cross Orders.

The Exchange's proposal to adopt Block Order Mechanism and Customer Cross Order pricing is equitable and not unfairly discriminatory as no Participant would be subject to any fees or be paid any rebates for orders executed into the Block Order Mechanism or Customer Cross Orders.

³ The Block Order Mechanism is for single leg transactions only. Block Orders are orders for fifty (50) contracts or more. See Securities Release Act No. 89759 (September 3, 2020), 85 FR 55877 (September 3, 2020) [*sic*] (SR-BX-2020-023).

⁴ See Options Technical Update #2021-2.

⁵ A Customer Cross Order is an order type within Options 3, Section 7(a)(10). A Customer Cross Order is comprised of two Public Customer Orders automatically executed upon entry provided that the execution is at or between the best bid and offer on the Exchange and (i) is not at the same price as a Public Customer Order on the Exchange's limit order book and (ii) will not trade through the NBBO. See Securities Release Act No. 89476 (August 4, 2020), 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

⁶ 15 U.S.C. 78 f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

⁸ *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)).

⁹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

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.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. 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 fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-Market Competition

Options 7, Section 1

The Exchange's proposal to relocate rule text related to the Removal of Days for Purposes of Pricing Tiers within Options 7, Section 2(6) into Options 7, Section 1, General Provisions, without change, does not impose an undue burden on competition as the rule text will continue to apply uniformly to all Participants.

Options 7, Section 2

The Exchange's proposal to adopt Block Order Mechanism and Customer Cross Order pricing does not impose an undue burden on competition as no Participant would be subject to any fees or be paid any rebates for orders executed into the Block Order Mechanism or Customer Cross Orders.

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.¹⁰ 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-BX-2021-025 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-2021-025. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-BX-2021-025 and should be submitted on or before June 30, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-12032 Filed 6-8-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92105; File No. SR-FINRA-2020-031]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Adopt Proposed Rule 6439 (Requirements for Member Inter-Dealer Quotation Systems) and Rescind the Rules Related to the OTC Bulletin Board Service

June 3, 2021.

I. Introduction

On September 24, 2020, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to rescind the rules related to the OTC Bulletin Board Service and cease its operation and to adopt new requirements for member inter-dealer quotation systems that disseminate quotations in equity securities traded over-the-counter ("OTC"). The proposed rule change was published for comment in the **Federal Register** on October 7, 2020.³ On November 4, 2020, pursuant

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Act Release No. 90067 (October 1, 2020), 85 FR 63314 ("Notice"). Comments on the proposed rule change can be found at: <https://www.sec.gov/comments/2020/2020-031>

Continued

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On December 21, 2020, FINRA filed Amendment No. 1 to the proposed rule change.⁶ On December 30, 2020, the Commission published notice of Amendment No. 1 and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change.⁸ On April 5, 2021, the Commission extended the period for consideration of the proposed rule change to June 4, 2021.⁹ On June 1, 2021, FINRA filed Amendment No. 2 to the proposed rule change, which replaces and supersedes Amendment No. 1 in its entirety.¹⁰ The Commission received four comment letters regarding the proposed rule change,¹¹ and two responses to comments from FINRA.¹² This order

www.sec.gov/comments/sr-finja-2020-031/srfinja2020031.htm.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Exchange Act Release No. 90335 (November 4, 2020). The Commission designated January 5, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁶ Amendment No. 1 may be found at: <https://www.sec.gov/comments/sr-finja-2020-031/srfinja2020031-8841399-238269.pdf>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Exchange Act Release No. 90824, 86 FR 653 (January 6, 2021).

⁹ See Securities Exchange Act Release No. 91474, 86 FR 18583 (April 9, 2021).

¹⁰ Amendment No. 2 is a partial amendment in which FINRA added a representation that the effective date for deleting the rules related to the OTCBB (as defined herein) will not occur until: (1) Proposed Rule 6439 (except for Rule 6439(d)(1)(B)) is effective; and (2) the Commission grants FINRA's request set forth in the QEQS Designation Request Letter (as defined herein) (or FINRA files a rule filing otherwise setting the implementation date for deleting the rules related to the OTCBB and the Commission approves such rule filing, if required). Because Amendment No. 2 to the proposed rule clarifies the timing of effectiveness of the proposed rule change and does not materially alter the substance of the proposed rule change, Amendment No. 2 is not subject to notice and comment. Amendment No. 2 may be found at: <https://www.sec.gov/comments/sr-finja-2020-031/srfinja2020031.htm>.

¹¹ See Letters from Christopher Bok, Chief Compliance Officer, OTC Link, LLC, dated October 28, 2020 ("OTC Link Letter 1"); Kimberly Unger, CEO and Executive Director, The Security Traders Association of New York, Inc., dated October 28, 2020 ("STANY Letter"); Sherry J. Sandler, Global OTC, dated November 9, 2020 ("Global OTC Letter"); and Cass Sanford, Associate General Counsel, OTC Markets Group, Inc., dated January 27, 2021 ("OTC Link Letter 2").

¹² See Letters from Racquel Russell, Associate General Counsel, FINRA, dated November 20, 2020 ("FINRA Letter 1") and February 12, 2021 ("FINRA Letter 2").

approves the proposed rule change, as modified by Amendment No. 2.

II. Summary of the Proposal, as Modified by Amendment No. 2

As further described below, FINRA proposes to (i) rescind FINRA's rules governing the OTC Bulletin Board Service ("OTCBB") and cease its operation; and (ii) adopt new Rule 6439 (Requirements for Member Inter-Dealer Quotation Systems) to expand the obligations of member interdealer quotation systems ("IDQSs")¹³ that disseminate quotation updates on a real-time basis in OTC Equity Securities.¹⁴

A. Rescission of Rules Governing the OTCBB

The OTCBB is a FINRA-operated IDQS available for use by broker-dealers to publish quotations in eligible OTC Equity Securities.¹⁵ FINRA has operated the OTCBB since 1990.¹⁶ FINRA states that, due to technological advancements since 1990 and the increase in alternative electronic venues with more extensive functionality than the OTCBB, the level of quotation activity occurring on the OTCBB has continued to decline over the past several years and is now nonexistent.¹⁷ FINRA represents that, as of the date that it filed the proposed rule change, the OTCBB does not display or widely disseminate quotation information on any OTC Equity Security.¹⁸

FINRA states that it does not believe that continued operation of the OTCBB serves any benefit to investors or the marketplace and that ceasing operation of the OTCBB would eliminate potential investor confusion regarding the availability of quotation information for OTC Equity Securities.¹⁹ In addition,

¹³ FINRA Rule 6420(c) defines "inter-dealer quotation system" as "any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers." This definition tracks the Commission's definition of the same term in Exchange Act Rule 15c2-11, 17 CFR 240.15c2-11.

¹⁴ The term "OTC Equity Security" is defined in FINRA Rule 6420(f) as any equity security that is not an "NMS stock" as that term is defined in Rule 600(b)(47) of Regulation NMS; provided, however, that the term "OTC Equity Security" shall not include any Restricted Equity Security. The term "Restricted Equity Security" is further defined in FINRA Rule 6420(k) to mean any equity security that meets the definition of "restricted security" as contained in Rule 144(a)(3) under the Securities Act of 1933.

¹⁵ See Notice, *supra* note 3, at 63315.

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See *id.* at 63318. For example, FINRA states that where investors look to feeds that solely disseminate OTCBB data for quotation information on a particular OTC Equity Security, investors mistakenly may conclude that there are no current quotations in the security (when, in fact, there may

be numerous quotations available elsewhere—i.e., on member-operated IDQSs). See *id.*

As a result, FINRA proposes to rescind the FINRA Rule 6500 Series, which governs the operation of the OTCBB. Among other things, the FINRA Rule Series 6500 contains provisions regarding the securities eligible to be quoted on the OTCBB (FINRA Rule 6530), market maker obligations on the OTCBB (FINRA Rule 6540), and transaction reporting (FINRA Rule 6550). FINRA also proposes to rescind FINRA Rule 7720, which sets forth the fees applicable to a broker-dealer that displays quotations or trading interest in the OTCBB, and to amend FINRA Rule

be numerous quotations available elsewhere—i.e., on member-operated IDQSs). See *id.*

²⁰ Section 17(b)(1) of the Act, which was added by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Penny Stock Act"), directs the Commission to "facilitate the widespread dissemination of reliable and accurate last sale and quotation information with respect to penny stocks . . . with a view toward establishing, at the earliest feasible time, one or more automated quotation systems that will collect and disseminate information regarding all penny stocks." 15 U.S.C. 78q-2(b)(1). Under Exchange Act Rule 3a51-1, "penny stock" is a non-NMS stock that among other things, does not include securities that have a price of five dollars or more as determined either on a per transaction basis or, in the absence of a transaction, on the basis of the inside bid quotation for the security displayed on an automated interdealer quotation system that has the characteristics set forth in Section 17(b)(2) of the Act or such other automated interdealer system that is designated by the Commission for purposes of the rule (such a system, a "Qualifying Electronic Quotation System" or "QEQS"). See 17 CFR 240.3a51-1; Exchange Act Release No. 30608 (April 20, 1992), 57 FR 18004 (April 28, 1992) ("Penny Stock Rules Adopting Release"); 17 CFR 240.3a51-1, 15g-1 through 15g-9 and 15g-100 ("Penny Stock Rules"). The Commission, in adopting the Penny Stock Rules, set forth standards it would consider when designating a QEQS. See Penny Stock Rules Adopting Release, 57 FR at 18012 n.64. The QEQS designation criteria set forth in the Penny Stock Rules are based on the Exchange Act Section 17B characteristics of an automated quotation system that would facilitate the widespread dissemination of reliable and accurate last sale and quotation information with respect to penny stocks. See 15 U.S.C. 78q-2(b)(1) and (2). In 1992, the Commission designated the OTCBB, then operated by FINRA's predecessor the National Association of Securities Dealers, Inc. ("NASD"), as an automated interdealer quotation system and a QEQS for purposes of the Penny Stock Rules. See Letter from Margaret H. McFarland, Deputy Secretary, Commission, to Richard Ketchum, Executive Vice President, NASD, Inc., dated December 30, 1992 ("OTCBB Designation Letter"). The Commission thereafter granted the NASD's request for an extension of QEQS status. See Securities Exchange Act Release No. 38101 (Dec. 31, 1996), 62 FR 1010 (Jan. 7, 1997).

9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d–1(c)(2)) to remove reference to FINRA Rule 6550 (Transaction Reporting). While these proposed changes to the FINRA rulebook would cause the operation of the OTCBB to terminate, FINRA states that it would not cease operation of the OTCBB until: (1) Proposed Rule 6439 (except for proposed Rule 6439(d)(1)(B)) is effective, and (2) the Commission grants FINRA's request set forth in the QEQS Designation Request Letter (or FINRA files a rule filing otherwise setting the implementation date for deleting the rules related to the OTCBB and the Commission approves such rule filing, if required).²¹

B. Proposed Rule 6439 (Requirements for Member Inter-Dealer Quotation Systems)

FINRA states that all quotation activity in OTC Equity Securities now occurs on member-operated IDQs, rather than the OTCBB.²² FINRA proposes, in conjunction with the cessation of the OTCBB, to adopt new requirements for member IDQs that provide quotations in OTC Equity Securities in order to ensure that they have minimum standards in place.²³ FINRA states that it believes that the proposed requirements would complement the existing framework governing the form and content of quotations²⁴ and are consistent with the goals and objectives of Section 17B of the Act regarding the facilitation of widespread dissemination of reliable and accurate quotation information in penny stocks.²⁵

Proposed Rule 6439 would apply to member IDQs (whether or not such member is also an alternative trading system (“ATS”)) that permit quotation updates on a real-time basis in OTC

Equity Securities. Under proposed Rule 6439(a), member IDQs must establish, maintain and enforce written policies and procedures relating to the collection and dissemination of quotation information in OTC Equity Securities on or through their systems. Such written policies and procedures must be reasonably designed to ensure that quotations received and disseminated are informative, reliable, accurate, firm, and treated in a not unfairly discriminatory manner, including by establishing non-discretionary standards under which quotations are prioritized and displayed.²⁶ Member IDQs must also prominently disclose these written policies and procedures, along with any material updates, modifications and revisions thereto, to subscribers within five business days following the date of establishment of a policy or procedure or implementation of a material change, as well as provide them to prospective subscribers upon request.²⁷

Under proposed Rule 6439(b), member IDQs must establish non-discriminatory written standards for granting access to quoting and trading in OTC Equity Securities on their systems that do not unreasonably prohibit or limit any person with respect to access to services offered by such member IDQs.²⁸ As with the requirements under proposed Rule 6439(a), member IDQs would be required to prominently disclose these written standards relating to fair access, and any material updates, modifications and revisions thereto, to their subscribers within five business

days following the date of establishment of written standards or implementation of a material change, as well as provide them to prospective subscribers upon request.²⁹ In addition, member IDQs would be required to make and keep records of all grants of access and all denials or limitations of access. Such records must include, for all subscribers, the reasons for granting access, and, for all denials or limitations of access, the reasons for denying or limiting such access.³⁰

Proposed Rules 6439(c) and (d) would apply only to member IDQs that do not automatically execute all orders presented for execution against displayed quotations for which a member subscriber has an obligation under FINRA Rule 5220 (Offers at Stated Prices)³¹ (such a system is hereafter referred to as a “non-auto-executing member IDQS”). Under proposed Rule 6439(c), non-auto-executing member IDQs must establish, maintain and enforce written policies and procedures that are reasonably designed to address instances of unresponsiveness to orders in an OTC Equity Security. At a minimum, these policies and procedures must specify an efficient process for: (i) Monitoring subscriber unresponsiveness; (ii) subscribers to submit complaints to the non-auto-executing member IDQs regarding potential instances of order unresponsiveness; (iii) documenting the subscriber's rationale for unresponsiveness; and (iv) determining specified steps when an instance of, or repeated, order unresponsiveness may have occurred.³²

Under proposed Rule 6439(d), non-auto-executing member IDQs must report to FINRA, in a form and manner prescribed by FINRA,³³ certain aggregate and order-level information in OTC Equity Securities. Specifically, proposed Rule 6439(d)(1)(A) would require a non-auto-executing member IDQs to report to FINRA on a monthly basis the following aggregated information, categorized by FINRA

²¹ See Amendment No. 2, *supra* note 10. See also *infra* notes 46–47 and accompanying text.

²² See Notice, *supra* note 3, at 63320.

²³ *Id.* at 63316.

²⁴ FINRA currently has in place rules that govern the activity of member firms when they engage in quoting OTC Equity Securities. Specifically, the FINRA Rule 6400 Series (Quoting and Trading in OTC Equity Securities), among other things, provides a regulatory framework that governs the form and content of OTC Equity Securities' quotations, and the FINRA Rule 5200 Series sets forth rules of general applicability that govern quoting and trading practices in this market sector (hereinafter, the FINRA Rule Series 6400 and 5200 are collectively referred to as the “FINRA Quotation Governance Rules”). See Notice, *supra* note 3, at 63314–15. Rather than governing the activity of member firms, like the FINRA Quotation Governance Rules, proposed Rule 6439 would provide quotation governance standards for member IDQs on or through which quotations are displayed.

²⁵ See *supra* note 20.

²⁶ For example, FINRA states that a member IDQ would be required to address in its procedures its methodology for ranking quotations, including at a minimum, addressing factors such as price (including any applicable quote access fee), size, time, capacity and type of quotation (such as unpriced quotes and bid/offer wanted quotations). The member IDQ also would be required to include any other factors relevant to the ranking and display of quotations (e.g., reserve sizes, quotation updates, treatment of closed quotations, and quotation information imported from other systems). See Notice, *supra* note 3, at 63316.

²⁷ FINRA states that a member that is an IDQs at the time of the effective date of this proposed rule change would be required to prominently disclose the required information to its subscribers upon the effective date of the proposed rule change and, thereafter, within five business days of the implementation of any material update, modification or revision thereto. See *id.*, at n.16.

²⁸ FINRA states that this proposed requirement is consistent with the “fair access” requirements of Regulation ATS but would apply to quoting and trading in all OTC Equity Securities on the member IDQs, regardless of the percentage of average daily volume that such member IDQs had in the security. See 17 CFR 242.301(b)(5). FINRA states that while certain member IDQs may already be subject to the similar volume-based fair access requirements under Regulation ATS, proposed Rule 6439 would ensure the application of fair access requirements to all member IDQs. See Notice, *supra* note 3, at 63316.

²⁹ See *id.* at 63316–17. See also *supra* note 27.

³⁰ See proposed Rule 6439(b).

³¹ FINRA Rule 5220 and its associated Supplementary Material set forth members' firm quote obligations. Specifically, FINRA Rule 5220 provides that no member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

³² See Notice, *supra* note 3, at 63317.

³³ FINRA states that following Commission approval, FINRA would announce in a *Regulatory Notice* details about the required manner and timing of the submission of this information to FINRA. See Notice, *supra* note 3, at 63317, n.27.

member subscriber market participant identifier (MPID) across all symbols quoted by the MPID during the previous calendar month: (i) Total number of marketable orders presented for execution against the MPID's quotation;³⁴ (ii) average execution (full or partial) time for marketable orders presented against the MPID's quotation based on the time an order is presented; (iii) total number of full or partial executions based on the time a marketable order is presented that are within the following execution timeframes: <5 seconds; ≥5 and <10 seconds; ≥10 and <20 seconds; and ≥20 seconds; (iv) total number of marketable orders presented against the MPID's quotation that did not receive a full or partial execution; and (v) average response time of the highest 10% and highest 50% of the MPID's response times for marketable orders (for full or partial executions).³⁵

Proposed Rule 6439(d)(1)(B) would require non-auto-executing member IDQSs to provide to FINRA the following order-level information for each order presented against an MPID's quotation during the previous calendar month: (i) Buy/sell; (ii) security symbol; (iii) price; (iv) size; (v) All or None indicator (yes or no); (vi) order entry firm MPID; (vii) order receipt time; (viii) time in force; (ix) response time; (x) order response (e.g., execute, reject cancel, etc.); (xi) executed quantity; (xii) system-generated order number (if any); and (xiii) position in queue for quote (e.g., IL1, IL2).³⁶ However, to the extent that the above order-level information is or becomes reportable under the Consolidated Audit Trail ("CAT") pursuant to FINRA Rule 6830 (Industry Member Data Reporting), non-auto-executing member IDQSs would not be required to report this order-level information under proposed Rule 6439(d)(1)(B).³⁷

Proposed Rule 6439(e) would require each member IDQS to make available to customers on its website (or its affiliate distributor's website) a written description of each OTC Equity Security order- or quotation-related data product offered by such member IDQS and related pricing information, including fees, rebates, discounts and cross-

product pricing incentives. Member IDQSs would be required to keep the relevant website page(s) accurate and up-to-date with respect to the required data product descriptions and pricing information and to make such information available at least two business days in advance of offering a data product.³⁸ Proposed Rule 6439(e) would specify that a member IDQS is not precluded from negotiating lower fees with customers, provided that the member IDQS discloses on such website page(s) the circumstances under which it may do so.

Finally, under proposed Rule 6439(f), a member IDQS must provide FINRA with prompt notification when it reasonably becomes aware of any systems disruption that is not de minimis that degrades, limits, or otherwise impacts the member IDQS's functionality with respect to trading or the dissemination of market data.³⁹ Such notification must include, on a reasonable best efforts basis, a brief description of the event, its impact, and the member IDQS's resolution efforts.⁴⁰ FINRA states that, to comply with this requirement, a member IDQS that is an SCI ATS, as defined in Rule 1000 of Regulation SCI, could provide FINRA with the same information (or a duplicate copy of any notification) submitted to the Commission as required under Regulation SCI Rule 1002(b).⁴¹ promptly after filing the notification with the Commission.⁴² FINRA states that, if a member IDQS is not an SCI ATS, it could comply with this requirement by providing FINRA prompt notification when it reasonably becomes aware of any such systems disruption, and by providing periodic updates on the event and its resolution.⁴³ Such notifications would include, on a reasonable best efforts basis, a brief description of the event, its impact, and resolution efforts.⁴⁴

FINRA states that, if the proposed rule change is approved by the Commission, FINRA will announce in a *Regulatory Notice* the effective date(s) of the proposed rule change, which may be phased in but will be no later than 365 days following Commission approval.⁴⁵ Notwithstanding the foregoing, the effective date for rescinding the rules

related to the OTCBB will not occur until: (1) Proposed Rule 6439 (except for Rule 6439(d)(1)(B)) is effective,⁴⁶ and (2) the Commission grants FINRA's request set forth in the QEQS Designation Request Letter⁴⁷ (or FINRA files a rule filing otherwise setting the implementation date for deleting the rules related to the OTCBB and the SEC approves such rule filing, if required).⁴⁸ FINRA also states that it will examine for compliance by member IDQSs with proposed Rule 6439, including by reviewing the adequacy of member IDQSs' written policies and procedures and written fair access standards required under the proposal, conducting a targeted exam of impacted member IDQSs after the initial effectiveness of the rule, and will incorporate a Rule 6439 review as part of the regular exam program for impacted member firms.⁴⁹

III. Discussion and Commission Findings

After carefully reviewing the proposed rule change, as modified by Amendment No.2, the comment letters, and the FINRA letters, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁵⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,⁵¹ in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In addition, the Commission finds that the proposed rule change is consistent with Section 15A(b)(11) of the Act, in that it includes provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may

⁴⁶ FINRA states that proposed Rule 6439, with one exception related to the reporting to FINRA of order-level information, will become effective at the same time or prior to the rescission of the OTCBB rules. FINRA states that paragraph (d)(1)(B) of proposed Rule 6439 (requiring reporting of specified order-level information) may be phased at a later date within the 365-day timeframe to allow FINRA to better coordinate with the timeline for reporting information in OTC Equity Securities to the CAT under FINRA Rule 6830 (Industry Member Data Reporting). See Amendment No. 2, *supra* note 10.

⁴⁷ See *infra* note 66.

⁴⁸ See *id.*

⁴⁹ See Notice, *supra* note 3, at 63316, n.17.

⁵⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵¹ 15 U.S.C. 78o-3(b)(6).

³⁴ FINRA states that in this context, a "marketable order" refers to a message presented against a market maker's quote that is priced to be immediately executable. See *id.*, n.29.

³⁵ See proposed Rule 6439(d)(1)(A).

³⁶ See proposed Rule 6439(d)(1)(B).

³⁷ See proposed Rule 6439(d)(2). If such information is reportable to the CAT pursuant to FINRA Rule 6830, this information will be available to FINRA. Thus, separate reporting pursuant to proposed FINRA Rule 6439(d) would be duplicative.

³⁸ See proposed Rule 6439(e).

³⁹ FINRA would announce in a *Regulatory Notice* the methods and process by which members may provide systems disruption notifications to FINRA. See Notice, *supra* note 3, at 63318.

⁴⁰ See proposed Rule 6439(f).

⁴¹ 17 CFR 242.1002(b).

⁴² See Notice, *supra* note 3, at 63318.

⁴³ See *id.*

⁴⁴ See *id.*

⁴⁵ See Notice, *supra* note 3, at 63319.

be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied, and that such rules are designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.⁵² The Commission also finds that the proposal is consistent with Section 17B(b)(1) of the Act in that it is designed to facilitate the widespread dissemination of reliable and accurate last sale and quotation information with respect to penny stocks.⁵³

A. Rescission of Rules Governing the OTCBB

As noted by FINRA, the OTCBB currently does not display or widely disseminate quotation information on any OTC Equity Securities, and all quotation activity in OTC Equity Securities occurs on member IDQSs.⁵⁴ As a result, FINRA represents that discontinuance of the OTCBB as an IDQS will not impact the current level of quotation information available for OTC Equity Securities.⁵⁵ The Commission received two comment letters supporting FINRA's proposal to cease operation of the OTCBB.⁵⁶ These commenters agreed that the OTCBB no longer benefits investors or the marketplace due to how the market for OTC Equity Securities has evolved.⁵⁷

The Commission believes that the continued operation of the OTCBB, which FINRA represents is essentially defunct, provides no current benefit to the market and could cause investor confusion with respect to the availability of quotations in OTC Equity Securities. The Commission recently estimated⁵⁸ that, on average, there were

9,998 quoted OTC securities⁵⁹ that had published quotations per day during the calendar year 2019.⁶⁰ OTC Markets Group, which operates OTC Link ATS (a member IDQS that would be subject to proposed Rule 6439), currently identifies 81 broker-dealers that are active on the OTC Link ATS in OTC securities.⁶¹ In addition, from aggregated OTC Markets Group data for the calendar year 2019, the Commission identified 19,141 unique OTC securities for 16,059 unique companies.⁶² Of these securities, 11,542 unique OTC securities had at least one published quotation on OTC Link ATS and 9,895 unique companies had a security that was quoted at least once on OTC Link ATS during the calendar year 2019.⁶³ By contrast, the Commission understands that there currently is no quoting activity occurring on the OTCBB.⁶⁴ Given the non-existent quoting activity on the OTCBB and the emergence of member IDQSs, such as OTC Link ATS, as the dominant sources for quotation activity in OTC Equity Securities, the Commission agrees with FINRA that the continued operation of the OTCBB could result in confusion with respect to the availability of quotations in OTC Equity Securities. For example, an investor looking solely to the OTCBB for quotation data for a particular OTC Equity Security could mistakenly conclude that there are no current quotations in the security when, in fact, there may be quotations available elsewhere—i.e., on member IDQSs. Further, FINRA has represented that it will not cease operation of the OTCBB until proposed Rule 6439 (except for Rule 6439(d)(1)(B)) is effective and the Commission either grants FINRA's request set forth in the QEQS

Designation Request Letter or approves (if necessary) a subsequent rule filing from FINRA that otherwise sets the implementation date for deleting the rules related to the OTCBB.⁶⁵ Accordingly, the Commission finds that the proposed rule change to rescind FINRA's rules governing the OTCBB and cease its operation, while simultaneously implementing enhanced regulatory requirements for member IDQSs pursuant to Rule 6439, will protect investors and the public interest, consistent with Section 15A(b)(6) of the Act, by eliminating investor confusion that could arise because members no longer submit quotations to the OTCBB and, as a result, the OTCBB no longer displays any quotations in OTC Equity Securities.⁶⁶

B. Proposed Rule 6439 (Requirements for Member Inter-Dealer Quotation Systems)

The Commission finds that the proposed requirements set forth in Rule 6439 relating to member IDQSs that permit quotation updates on a real-time basis in OTC Equity Securities are consistent with the Exchange Act.

First, the Commission finds that proposed Rule 6439(a), which would require member IDQSs to establish, maintain and enforce written policies and procedures relating to the collection and dissemination of quotation information in OTC Equity Securities on or through their systems, is consistent with Section 15A(b)(11) of the Act, which requires FINRA rules relating to quotations for securities sold other than on a national securities exchange to be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations. The Commission believes that proposed Rule 6439(a) is designed to promote orderly procedures for collecting, distributing, and publishing quotations in OTC Equity Securities because the proposed requirements would apply to all member IDQSs that permit quotation updates on a real-time

⁵² 15 U.S.C. 78o-3(b)(11).

⁵³ 15 U.S.C. 78q-2(b)(1).

⁵⁴ See *supra* notes 18 and 22 and accompanying text.

⁵⁵ See Notice, *supra* note 3, at 63318.

⁵⁶ See OTC Link Letter 1 and STANY Letter, *supra* note 11.

⁵⁷ See STANY Letter, *supra* note 11, at 1; OTC Link Letter 1, *supra* note 11, at 1.

⁵⁸ See Securities Exchange Act Release Nos. 89891 (September 16, 2020), 85 FR 68124, 68185–86 (October 27, 2020) (“Exchange Act Rule 15c2–11 Release”). The Commission uses three sources of data on OTC securities. OTC Markets Group's “End-of-Day Pricing Service” and “OTC Security Data File” provide closing trade and quote data for the U.S. OTC equity market and include identifying information for securities and issuers. The Commission also uses information from the weekly OTC Markets Group's “OTC Company Data File.” Company Data Files include information about issuer reporting, shell, and bankruptcy status, as well as the SEC Central Index Key (CIK) identifier and whether an issuer's financial statements are audited. See *id.*, at 68185, n.640.

⁵⁹ While this data may include OTC securities that are restricted securities and thus outside of the scope of FINRA's definition of OTC Equity Securities, the Commission believes that the data is reasonably representative of quoting and trading activity in OTC Equity Securities.

⁶⁰ See *id.* at 68185. The number of securities quoted includes those securities with published priced and unpriced quotations. The Commission estimated that approximately seven percent of quoted OTC securities did not have priced quotations. See *id.* at 68185, n.641.

⁶¹ See Broker-Dealer Directory, OTC Markets Group, Inc., <https://www.otcmart.com/otc-link/broker-dealer-directory> (last visited Apr. 19, 2021, 2:16 p.m.). The Commission expects that not all of the broker-dealers included in the directory are actively engaged in quoting OTC securities. See also Exchange Act Rule 15c2–11 Release, *supra* note 58, at 68184.

⁶² See Exchange Act Rule 15c2–11 Release, *supra* note 58, at 68185.

⁶³ See *id.* at 68185, n.640. The Commission believes that OTC Markets Group data are reasonably representative of all OTC quoting and trading activity in the U.S. OTC equities market. See *id.*

⁶⁴ See *supra* note 18 and accompanying text.

⁶⁵ See Amendment No. 2, *supra* note 10.

⁶⁶ As noted above, the Commission previously designated the OTCBB as an automated interdealer quotation system and QEQS for purposes of the Penny Stock Rules. Historically, the universe of securities quoted on the OTCBB included penny stocks as well as higher priced OTC Equity Securities. See OTCBB Designation Letter, *supra* note 20. FINRA has stated that it intends to request that the Commission designate the FINRA OTC Reporting Facility (see *infra* note 109 and accompanying text), together with any FINRA-member IDQS, as a QEQS for purposes of the Penny Stock Rules (“QEQS Designation Request Letter”). See Notice, *supra* note 3, at 63116, n.15; Amendment No. 2, *supra* note 10.

basis in OTC Equity Securities. In addition, proposed Rule 6439(a) would require that a member IDQS's policies and procedures relating to collection and dissemination of quotation information must be reasonably designed to ensure that quotations received and disseminated are informative, reliable, accurate, firm and treated in a not unfairly discriminatory manner, including by establishing non-discretionary standards under which quotations are prioritized and displayed. Moreover, member IDQSs would be accountable to FINRA should their policies and procedures not meet the minimum standards set forth in proposed Rule 6439(a) and FINRA has represented that it will examine member IDQSs for compliance with the requirements of proposed Rule 6439, including by reviewing the adequacy of member IDQSs' written policies and procedures.⁶⁷ In addition, by requiring that all member-IDQSs that provide quotations in OTC Equity Securities maintain policies and procedures for collecting and disseminating quotation information, and that such policies and procedures be reasonably designed to ensure that quotations received and disseminated are informative, reliable, accurate, firm and treated in a not unfairly discriminatory manner, the Commission finds that proposed Rule 6439(a) is designed to promote just and equitable principles of trade and protect investors and the public interest, consistent with Section 15A(b)(6) of the Act.

Second, the Commission finds that proposed Rule 6439(b), which would require a member IDQS to establish non-discriminatory written standards for granting access to quoting and trading in OTC Equity Securities on its system that do not unreasonably prohibit or limit any person in respect to access to services offered by such member IDQS, is consistent with Section 15A(b)(6) of the Act, which requires that FINRA's rules be designed to promote just and equitable principles of trade and protect investors and the public interest. The Commission believes that the proposed requirements relating to fair access are designed to afford fair and non-discriminatory access for all market participants to the quotation systems of all member IDQSs that provide real-time quotations in OTC Equity Securities. Given the significant role that member IDQSs serve in the marketplace for quotations in OTC Equity Securities, the Commission believes that these requirements should improve access to quotations for these securities, which

should help to ensure that investors have the pricing information necessary to make informed investment decisions with respect to OTC Equity Securities. As a result, the Commission finds that the requirements of proposed Rule 6439(b) are designed to promote just and equitable principles of trade and protect investors and the public interest, consistent with Section 15A(b)(6) of the Act.

One commenter suggested that member IDQSs that are subject to the fair access requirements under Regulation ATS should be exempt from the fair access requirements of proposed Rule 6439(b) because such requirements are duplicative.⁶⁸ In response, FINRA stated that, to the extent that a member IDQS already is subject to Regulation ATS's fair access standards with respect to all OTC Equity Securities traded on its platform, then the proposal would only additionally require that the member IDQS prominently disclose such fair access policies and procedures to subscribers.⁶⁹ However, to the extent that a member IDQS is not already subject to the fair access standards of Regulation ATS for all OTC Equity Securities traded on its platform, FINRA stated that the proposal would fill that gap by requiring the member IDQS to expand the fair access standards to activity in all OTC Equity Securities and to prominently disclose such fair access policies and procedures.⁷⁰

As discussed, the Commission believes that the requirements relating to fair access for member IDQSs, as set forth in proposed Rule 6439(b), are consistent with the Exchange Act. The fair access requirements set forth in Rule 301(b)(5) of Regulation ATS,⁷¹ which are consistent with the requirements set forth in proposed Rule 6439(b), only apply if an ATS meets certain volume thresholds set forth Rule 301(b)(5).⁷² On the other hand, the requirements set forth in proposed Rule 6439(b) would apply to quoting and trading in all OTC Equity Securities on a member IDQS, regardless of the percentage of average daily volume that such member IDQS has in the security. Thus, FINRA's proposal would ensure the application of fair access requirements to all member IDQSs that

permit quotation updates on a real-time basis in OTC Equity Securities and to all OTC Equity Securities quoted and traded on such member IDQSs. Furthermore, as noted by FINRA in its response to comments,⁷³ proposed Rule 6439(b) sets forth an additional requirement that is not included in Rule 301(b)(5) of Regulation ATS: That a member IDQS's written standards relating to access and any material updates, modifications and revisions thereto "be prominently disclosed to subscribers within five business days following the date of establishment of the written standards or implementation of the material change and provided to prospective subscribers upon request." Accordingly, contrary to the commenter's assertion, the Commission notes that the proposed fair access requirements under Rule 6439(b) are not duplicative of the fair access requirements set forth in Rule 301(b)(5) of Regulation ATS. Further, the Commission believes that exempting member IDQSs subject to the fair access requirements under Regulation ATS from proposed Rule 6439(b), as the commenter requested, would result in such member IDQSs not being subject to a key requirement of the proposed rule and would result in disparate treatment among member IDQSs.

Third, proposed Rules 6439(c) and (d) would require non-auto-executing member IDQSs to establish, maintain and enforce written policies and procedures that are reasonably designed to address instances of unresponsiveness when orders are presented to trade with firm quotations displayed in OTC Equity Securities, and to report on a monthly basis certain aggregate and order-level information to FINRA. FINRA states that such requirements are designed to enhance compliance with the firm quote requirements for non-auto-executing member IDQSs as set forth in FINRA Rule 5220.⁷⁴ FINRA also states that the proposed information to be reported to FINRA would support its oversight of the OTC securities market by providing FINRA with additional information regarding the quotation activities occurring on non-auto-executing member IDQSs and would assist FINRA in surveilling for member compliance

⁶⁸ See OTC Link Letter 1, *supra* note 11, at 4. The Commission notes that while the commenter, in making this suggestion, referred to paragraph (c) of the proposed rule, it is paragraph (b) under proposed Rule 6439— not paragraph (c) that sets forth the proposed fair access requirements in Rule 6439. See *supra* notes 28–30 and accompanying text.

⁶⁹ See FINRA Letter 1, *supra* note 12, at 5.

⁷⁰ See *id.*, at 5–6.

⁷¹ 17 CFR 242.301(b)(5).

⁷² See *supra* note 28.

⁷³ See FINRA Letter 1, *supra* note 12, at 5–6.

⁷⁴ See Notice, *supra* note 3, at 63317. FINRA states that order unresponsiveness is an area where it regularly receives complaints. FINRA notes that in 2018, it received 119 complaints from members regarding instances of unresponsiveness to requests to execute against a displayed quotation. See *id.*, at 63318, n.26.

⁶⁷ See *supra* note 49 and accompanying text.

with firm quote obligations and unresponsiveness.⁷⁵

The Commission agrees that unresponsiveness by those who display quotations in the OTC Equity Securities market can be harmful to the market and investors in OTC Equity Securities. The principle that a displayed quotation should be “firm” is well established in the securities markets.⁷⁶ In its proposal, FINRA would require member IDQSs that provide quotations in OTC Equity Securities but do not auto-execute orders presented for execution against such quotations to adopt standards to address instances of unresponsiveness by their subscribers. Because a system that permits manual responses to orders received against displayed quotations can result in order unresponsiveness, the Commission believes that requiring such systems to establish, maintain and enforce written policies and procedures that are reasonably designed to address instances of unresponsiveness should help to ensure that market participants can reasonably rely on the displayed quotations on member IDQSs that do not auto-execute orders. In addition, the requirement for non-auto-executing member IDQSs to report aggregate and order-level information to FINRA should help FINRA surveil for unresponsiveness and “backing away” by members and to take remedial actions against such members, if necessary. As such, the Commission finds that paragraphs (c) and (d) of proposed Rule 6439 are consistent with Section 15A(b)(6) of the Act in that they are designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Two commenters suggested that FINRA revise proposed Rule 6439(d) to exempt member-IDQSs that would have reporting obligations under proposed

paragraph (d)⁷⁷ from applicable CAT reporting obligations.⁷⁸ These commenters stated that proposed Rule 6439 would provide a reporting mechanism that is more consistent with the way in which IDQSs operate and therefore would make collection and reporting more efficient and effective than under the order-based reporting prescribed by the CAT.⁷⁹ In response, FINRA stated that the proposal was never intended to impact the outcome of whether the commenters’ order-level information should become CAT reportable and that FINRA continues to believe that it is appropriate to exempt a non-auto-executing member IDQS from reporting under proposed Rule 6439(d)(1)(B) if the IDQS’s order-level information is CAT reportable.⁸⁰

The Commission finds that FINRA’s proposal to exempt non-auto-executing member IDQSs from reporting order-level information pursuant to proposed Rule 6439(d)(1)(B) to the extent such information becomes reportable to CAT is reasonable and is designed to effectively reduce reporting redundancies. If the information required to be reported pursuant to Rule 6439(d)(1)(B) is already reportable, or becomes reportable, to the CAT pursuant to FINRA Rule 6830, it will be available to FINRA through the CAT, so separate reporting pursuant to proposed FINRA Rule 6439(d)(1)(B) would be duplicative. As a result, the Commission finds the proposed exemption is consistent with Section 15A(b)(6) of the

Act in that it is designed to promote just and equitable principles of trade.

These two commenters also requested that FINRA provide additional guidance with respect to proposed Rule 6439(c)(3) and (4), which would require non-auto-executing member IDQSs to maintain policies and procedures that specify an efficient process for documenting a subscriber’s rationale for unresponsiveness and for determining specified steps when an instance of repeated order unresponsiveness may have occurred.⁸¹ In response to these comments, FINRA provided some additional guidance specifically requested by commenters relating to the requirements of proposed Rule 6439(c)(3) and (4).⁸²

In response, one commenter raised concerns regarding the requirements of proposed Rule 6439(c)(2) and (c)(3), which would require non-auto-

⁸¹ See STANY Letter, *supra* note 11, at 3; OTC Link Letter 1, *supra* note 11, at 2–3. One commenter noted that, as the only non-auto-executing member IDQS, it would be the only IDQS that would be subject to the requirements set forth in paragraph (c) of the Rule, and requested that FINRA issue guidance confirming that its existing “saturation” feature and provision of data regarding subscriber unresponsiveness to certain order messages under its trading functionalities meet the standards set forth in paragraphs (c)(3) and (c)(4) of proposed Rule 6439. See OTC Link Letter 1, *supra* note 11, at 2–3.

⁸² See FINRA Letter 1, *supra* note 12, at 3–4. FINRA stated that it agrees that OTC Link ATS’s “saturation” feature, as FINRA understands it, is consistent with the objectives of some of the proposed requirements in Rule 6439(c), such as proposed Rule 6439(c)(1) and (c)(4), which would require that a member IDQS’s policies and procedures specify an efficient process for monitoring subscriber unresponsiveness and determining specified steps when an instance of repeated order unresponsiveness may have occurred. However, FINRA indicated that it does not believe that OTC Link ATS’s current saturation feature would meet the objectives of proposed paragraphs (c)(2) or (3) of Rule 6439, which, when combined, would require that the member IDQS provide a mechanism or process whereby one subscriber may submit or report to the non-auto-executing member IDQS a potential instance of order unresponsiveness by another subscriber and document the subscriber’s rationale in response to that event. FINRA further stated that it does not expect the member IDQS to investigate or confirm a subscriber’s rationale for the unresponsiveness, but expects that the member IDQS provide a mechanism or process that would permit a subscriber to submit or report a potential instance of order unresponsiveness and the member IDQS would be required to request that the other subscriber provide its rationale in connection with the instance. For example, the member IDQS could provide a messaging protocol or other mechanism that would permit a subscriber to submit or report to the member IDQS a potential instance of order unresponsiveness and that also would contact the other party to obtain their rationale. FINRA stated that it believes that the member IDQS is in the best position to obtain this information from the subscriber at the time of, or close in time to, the event, and to document this information and make it available to FINRA upon request. See *id.*, at 3–4.

⁷⁷ See *supra* notes 33–37 and accompanying text for a discussion of the requirements proposed under Rule 6439(d).

⁷⁸ See STANY Letter, *supra* note 11, at 2; OTC Link Letter 1, *supra* note 11, at 3–4. As proposed, non-auto-executing member IDQSs would be exempt from the reporting requirements under proposed Rule 6439(d)(1)(B) to the extent that such items are subject to reporting to the CAT under FINRA Rule 6830. See *supra* note 37 and accompanying text.

⁷⁹ See STANY Letter, *supra* note 11, at 2; OTC Link Letter 1, *supra* note 11, at 3–4. In connection with this suggested modification, one commenter stated its view that trade messages on its ATS—OTC Link ATS—are negotiations and do not constitute “orders” for purposes of Rule 6439 or with respect to any CAT reporting obligations. See OTC Link Letter 1, *supra* note 11, at 4. FINRA stated in its proposal, and again in its response to comments, that such negotiation activities are indeed “orders” for purposes of FINRA’s firm quote rule obligations and proposed Rule 6439. See Notice, *supra* note 3, at 63317, n.28 (stating that such negotiation activities are considered “orders” for purposes of firm quote rule obligations and proposed Rule 6439). See FINRA Letter 1, *supra* note 12, at 4, n.12. See also Exchange Act Rule 3b–16(c) and Rule 300(e) of Regulation ATS (defining an “order” as “any firm indication of a willingness to buy or sell a security, as either principal or agent, including any bid or offer quotation, market order, limit order, or other priced order”).

⁸⁰ See FINRA Letter 1, *supra* note 12, at 4.

⁷⁵ See *id.*

⁷⁶ See, e.g., Securities Exchange Act Release No. 60835 (October 16, 2009), 74 FR 54616 (October 22, 2009) (FINRA–2009–055) (approving proposal to adopt FINRA Rule 5220 (Offers at Stated Prices) into FINRA’s consolidated rulebook) (“The Commission believes that the proposed rule change is designed to protect investors and promote the maintenance of fair, orderly and efficient markets by prohibiting a member from publishing a report of any transaction unless the member believes that it was a bona fide purchase or sale of the security and from “backing away” from its quotations.”); Securities Exchange Act Release No. 12670 (July 29, 1976), 41 FR 32856 (August 5, 1976) (proposing Exchange Act Rule 11Ac1–1 (predecessor to Rule 602 of Regulation NMS) (“The reliability and availability of quotation information are basic components of a national market system and are needed so that broker-dealers are able to make best execution decisions for their customers’ orders, and customers are able to make order entry decisions.”)).

executing member IDQSs to maintain policies and procedures that specify an efficient process for subscribers submitting to the member IDQS complaints regarding potential instances of order unresponsiveness and documenting the subscriber's rationale for unresponsiveness.⁸³ This commenter stated that, in attempting to perform this function, its member IDQS would not have access to the necessary underlying information regarding the issue and would lack the regulatory authority to resolve the dispute.⁸⁴ This commenter further stated that these proposed requirements effectively require member IDQSs to act as a clearinghouse for subscriber complaints of non-responsiveness and blurs the distinction between SROs and commercial market operators.⁸⁵ The commenter accordingly requested that FINRA amend the proposal to only require that a member IDQS escalate instances of unresponsiveness to FINRA for review when the IDQS is informed of such cases via appropriate channels (*i.e.*, phone, email, message).⁸⁶

In response, FINRA stated that it is cognizant that IDQSs, including the commenter, lack access to certain information and lack regulatory authority and that it would not expect a member IDQS to gather extraneous information or resolve disputes (beyond steps that may be taken pursuant to proposed Rule 6439(c)(4)).⁸⁷ FINRA stated that the proposal would require that reasonable policies and procedures be developed, which could include specifying reasonable and appropriate form and methods through which a member would accept complaints from subscribers pursuant to proposed paragraph (c)(2).⁸⁸ In addition, the proposed rule would not require that member IDQSs, including the commenter, investigate or confirm a subscriber's rationale for unresponsiveness or determine whether a violation of FINRA Rule 5220 (Offers at Stated Prices) has occurred.⁸⁹ FINRA stated that the role of a member IDQS under proposed paragraph (c)(3) would be limited to information collection, and the lack of access to certain information

regarding instances of potential unresponsive would therefore not impair a member IDQS's ability to establish policies and procedures required under the proposal.⁹⁰ FINRA provided that it continues to believe that the requirements of proposed Rule 6439(c) are reasonable and appropriate for non-auto-executing member IDQSs given that order unresponsiveness only occurs on systems that permit manual response to orders received against displayed quotations and that it believed the member IDQS is in the best position to obtain this information from the subscriber at the time of, or close in time to, the event, and to document this information and make it available to FINRA upon request.⁹¹

The Commission has considered commenters' request for guidance and modifications to the proposed requirements and FINRA's responses and believes FINRA's responses support the finding that the proposed Rule 6439(c) is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, consistent with Section 15A(b)(6) of the Act. As previously noted, a system that permits manual responses to orders received against displayed quotations can result in order unresponsiveness. The Commission agrees with FINRA that requiring such systems to establish, maintain and enforce written policies and procedures that are reasonably designed to address instances of unresponsiveness, which includes requiring such systems to maintain policies and procedures that specify an efficient process for subscribers submitting to the member IDQS complaints regarding potential instances of order unresponsiveness and documenting the subscriber's rationale for unresponsiveness, should help ensure that market participants can reasonably rely on the displayed quotations on member IDQSs that do not auto-execute orders and help FINRA surveil for unresponsiveness on such systems.

Further, the Commission finds that proposed Rule 6439(e), which will require member IDQSs to publish and keep updated information about order- or quotation-related data products, is consistent with both Exchange Act Section 15A(b)(6)'s requirement that FINRA's rules be designed to protect investors and the public interest and Exchange Act Section 15A(b)(11)'s requirement that FINRA's rules contain

provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied. The publication of such information will provide FINRA with useful information to ensure compliance with FINRA rules and to monitor the widespread availability of OTC Equity Securities' quotation information to investors and to market participants through non-SRO sources. In addition, market participants will benefit from a better understanding of such data products when assessing a particular member IDQS as a potential trading venue.

Finally, the Commission finds that proposed Rule 6439(f), which would require a member IDQS to provide FINRA with prompt notification when it reasonably becomes aware of any systems disruption that is not de minimis that degrades, limits, or otherwise impacts the member IDQS's functionality with respect to trading or the dissemination of market data, is consistent with Exchange Act Section 15A(b)(6)'s requirement that FINRA's rules be designed to protect investors and the public interest and Section 15A(b)(11)'s requirement that FINRA's rules relating to quotations be designed to promote orderly procedures for collecting, distributing, and publishing quotations. The Commission believes that the uninterrupted operation of member IDQSs is vital to investor confidence in the OTC securities market structure and furthers the goals of Section 17B of the Act.⁹² As such, the Commission believes that proposed Rule 6439(f) should help FINRA monitor and resolve any issues that could disrupt investors' ability to quote and execute trades in OTC Equity Securities, thereby promoting orderly procedures with respect to quotations in OTC Equity Securities and protecting investors and the public interest.

FINRA has committed to examining member IDQSs for compliance with proposed Rule 6439 and has represented that it will conduct a targeted exam of impacted member IDQSs after the initial effectiveness of the rule and will incorporate a proposed Rule 6439 review as part of the regular exam program for impacted member firms.⁹³ The Commission believes that these exams should assist FINRA in reviewing

⁸³ See OTC Link Letter 2, *supra* note 9.

⁸⁴ See *id.*, at 2.

⁸⁵ See *id.*, at 3.

⁸⁶ See *id.*

⁸⁷ See FINRA Letter 2, *supra* note 12, at 3.

⁸⁸ See *id.* As an example, FINRA stated that OTC Markets may determine to accept complaints only through a specified email address or through a complaint protocol that it may establish and, in doing so, its obligations under proposed paragraph (c)(3) would be limited to complaints received through reasonable, specified, established channels. See *id.*

⁸⁹ See *id.*

⁹⁰ See *id.*

⁹¹ See *id.*, at 4.

⁹² See *infra* notes 99–101 and accompanying text.

⁹³ See *supra* note 49 and accompanying text.

for compliance by member IDQSs with the requirements of proposed Rule 6439.

The Commission notes that, despite certain suggested modifications to the proposed rule, all three commenters supported FINRA's proposal to enhance regulatory requirements for IDQSs.⁹⁴ In addition to commenters' suggested modifications discussed above,⁹⁵ two commenters also suggested that FINRA revise Rule 6437 (Prohibition from Locking and Crossing), which currently prohibits locking and crossing quotations displayed in the same IDQS, to also prohibit locking and crossing displayed quotations between connected IDQSs.⁹⁶ In its response to comments, FINRA stated that it has been actively considering whether any changes to the scope of Rule 6437 are appropriate and that it will continue to separately assess this issue outside of the context of this proposed rule change.⁹⁷ The Commission agrees with FINRA that the commenters' suggestion related to FINRA Rule 6437 is beyond the scope of the proposed rule change.

C. Section 17B of the Act

Finally, the Commission believes that the proposed rule change to rescind the rules related to the OTCBB and cease its operation and adopt proposed Rule 6439 to expand the obligations of member IDQSs that display quotations in OTC Equity Securities is consistent with Section 17B of the Act.⁹⁸ FINRA has operated the OTCBB pursuant to the Commission's obligations under Section 17B of the Act to facilitate the widespread dissemination of quotation information for penny stocks through an automated quotation system operated by a registered securities association.⁹⁹ When Congress enacted Section 17B, it found that there was a lack of reliable and accurate quotation and last sale information in the markets for penny stocks.¹⁰⁰ As such, Section 17B was designed to remedy inefficiencies and address regulatory concerns caused by this lack of reliable market information about penny stocks traded OTC, and Congress found that a fully

implemented automated quotation system for penny stocks would meet the information needs of investors and market participants and add visibility and regulatory and surveillance data to that market.¹⁰¹

Based on how the OTC market has evolved since the adoption of Section 17B,¹⁰² the Commission believes that the OTCBB no longer furthers the goals and objectives of Section 17B of the Exchange Act because it no longer is utilized as a source of quotation information for those OTC Equity Securities that meet the definition of "penny stock."¹⁰³ Rather, member IDQSs currently collect and disseminate all quotation information in OTC Equity Securities, including penny stocks, and make such quotation information available to investors and market participants.¹⁰⁴ Therefore, the Commission finds that discontinuing dissemination of potentially incomplete and misleading quotation information from the marketplace by ceasing operation of the OTCBB, while at the same time implementing enhanced requirements for member IDQSs on or through which quotations in OTC Equity Securities, including penny stocks, are currently displayed, as set forth in proposed Rule 6439, best serves and promotes the goals of Section 17B of the Act with respect to the widespread availability of quotation information in penny stocks.¹⁰⁵

FINRA has represented that, in advance of the discontinuance of the OTCBB, FINRA will take steps to ensure a smooth transition for issuers and members.¹⁰⁶ Specifically, although there are no members currently using the OTCBB, FINRA will publicize announcements through its website.¹⁰⁷ In addition, FINRA has represented that, following the cessation of the OTCBB, FINRA will continue to assess the widespread availability of quotation transparency to investors and market

participants through non-SRO sources on a regular basis, and if the availability of quotation information to investors declines, FINRA will revisit and, if necessary, file a proposed rule change to establish an SRO-operated IDQS (or other measure) to facilitate the type of widespread quotation transparency described in Section 17B of the Act.¹⁰⁸ Finally, FINRA will continue to centralize last sale transaction reporting in OTC Equity Securities, including for penny stock transactions, through the FINRA OTC Reporting Facility ("ORF"), a FINRA-operated system that provides last sale information on OTC Equity Securities.¹⁰⁹ Thus, following cessation of the OTCBB, member IDQSs subject to proposed Rule 6439 will continue to collect and disseminate quotation information for OTC Equity Securities, including penny stocks, while the ORF will continue to collect and disseminate real-time last sale price and volume information for OTC Equity Securities, including penny stocks.

IV. Conclusion

It is therefore ordered that, pursuant to Section 19(b)(2) of the Act,¹¹⁰ the proposed rule change (SR-FINRA-2020-031), as modified by Amendment No. 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹¹

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-12026 Filed 6-8-21; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice: 11439]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: "Impressionism to Modernism: Monet to Matisse From the Bemberg Foundation" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the

¹⁰⁸ See *id.*

¹⁰⁹ See FINRA Rule 6600 and 7300 Series (OTC Reporting Facility). FINRA members generally are required to report trades in OTC Equity Securities to the ORF within 10 seconds of execution and FINRA widely disseminates this transaction information in real-time. See FINRA Rule 6622 (Transaction Reporting). See also Notice, *supra* note 3, at 63318, n.36.

¹¹⁰ 15 U.S.C. 78s(b)(2).

¹¹¹ 17 CFR 200.30-3(a)(12).

¹⁰¹ See 15 U.S.C. 78q-2(a)(3).

¹⁰² See Public Law 101-429, 104 Stat. 931 (1990).

¹⁰³ See *supra* notes 60-64 and accompanying text. As noted above, the universe of securities historically quoted in the OTCBB included penny stocks as well as higher priced OTC Equity Securities. See *supra* note 66.

¹⁰⁴ See Notice, *supra* note 3, at 63318.

¹⁰⁵ See *supra* note 20 and 66. As discussed above, the Commission previously designated the OTCBB as a QEQS for purposes of the Penny Stock Rules. In connection with FINRA's cessation of the OTCBB, FINRA has stated that it intends to request that the Commission designate the FINRA OTC Reporting Facility (see *infra* note 109 and accompanying text), together with any FINRA-member IDQS, as a QEQS for purposes of the Penny Stock Rules. See *supra* note 66.

¹⁰⁶ See Notice, *supra* note 3, at 63319.

¹⁰⁷ See *id.* FINRA represents that there currently are no OTCBB symbols. See *id.*, at 63319, n.37.

⁹⁴ See, generally, OTC Link Letter 1, STANY Letter and Global OTC Letter, *supra* note 11.

⁹⁵ See *supra* notes 68, 78-79, and 81 and accompanying text.

⁹⁶ See STANY Letter, *supra* note 11, at 3; OTC Link Letter 1, *supra* note 11, at 4-5.

⁹⁷ See FINRA Letter 1, *supra* note 12, at 6.

⁹⁸ 15 U.S.C. 78q-2. See also *supra* note 20. Section 17B was enacted by Congress as part of the Penny Stock Act, which was designed to remedy inefficiencies and address regulatory concerns caused by the lack of reliable market information on penny stocks traded OTC.

⁹⁹ See 15 U.S.C. 78q-2(b). See also OTCBB Designation Letter, *supra* note 20.

¹⁰⁰ See 15 U.S.C. 78q-2(a)(1).

exhibition “Impressionism to Modernism: Monet to Matisse from the Bemberg Foundation” at the Museum of Fine Arts, Houston, in Houston, Texas, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, SA-5, Suite 5H03, Washington, DC 20522-0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236-3 of August 28, 2000.

Matthew R. Lussenhop,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021-12048 Filed 6-8-21; 8:45 am]

BILLING CODE 4710-05-P

STATE JUSTICE INSTITUTE

SJI Board of Directors Meeting

AGENCY: State Justice Institute.

ACTION: Notice of meeting.

SUMMARY: The SJI Board of Directors will be meeting on Monday, June 21, 2021 at 2 p.m. ET. The purpose of this meeting is to consider grant applications for the 3rd quarter of FY 2021, and other business.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 12700 Fair Lakes Circle, Suite 340, Fairfax, VA 22033, 703-660-4979, contact@sjj.gov.

Jonathan D. Mattiello,
Executive Director.

[FR Doc. 2021-12015 Filed 6-8-21; 8:45 am]

BILLING CODE 6820-SC-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2021-0007]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 13 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Comments must be received on or before July 9, 2021.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA-2021-0007 using any of the following methods:

- *Federal eRulemaking Portal:* Go to www.regulations.gov/, insert the docket number, FMCSA-2021-0007, in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click on the “Comment” button. Follow the online instructions for submitting comments.

- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

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

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcamedical@dot.gov, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions

regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-2021-0007), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to www.regulations.gov/docket?D=FMCSA-2021-0007. Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click the “Comment” button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number, FMCSA-2021-0007, in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.transportation.gov/privacy.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 13 individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

On July 16, 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (57 FR 31458). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures

established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of § 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely in intrastate commerce with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at www.regulations.gov/docket?D=FMCSA-1998-3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively.¹ The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association,

¹ A thorough discussion of this issue may be found in a FHWA final rule published in the *Federal Register* on March 26, 1996 and available on the internet at <https://www.govinfo.gov/content/pkg/FR-1996-03-26/pdf/96-7226.pdf>.

June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

III. Qualifications of Applicants

Gerald C. Adler

Mr. Adler, 29, has corneal scarring in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2020, his optometrist stated, "It is my professional opinion that Mr. Adler has sufficient vision to perform the tasks required to operate a commercial vehicle." Mr. Adler reported that he has driven straight trucks for 9 years, accumulating 648,000 miles, and tractor-trailer combinations for 4 years, accumulating 144,000 miles. He holds an operator's license from New Hampshire. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Paul R. Beckett

Mr. Beckett, 51, has a macular scar in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/70, and in his left eye, 20/20. Following an examination in 2020 his optometrist stated, "In my medical opinion, due to his fully functioning peripheral visual field and 20/20 best corrected vision in left eye and both eyes together, Mr. Beckett has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Beckett reported that he has driven straight trucks for 12 years, accumulating 24,000 miles and tractor-trailer combinations for 6 years, accumulating 450,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert W. Boyett

Mr. Boyett, 52, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2021, his optometrist stated, "He has stable and he has sufficient vision to operate a commercial vehicle safely at this time with no restrictions, in my medical opinion." Mr. Boyett reported that he has driven straight trucks for 18 years,

accumulating 2,152,800 miles, and tractor-trailer combinations for 33 years, accumulating 2,475,000 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Timothy W. Ford

Mr. Ford, 41, has a retinal detachment in his right eye due to a traumatic incident in 1996. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2021, his ophthalmologist stated, "Yes. Patient has the ability to operate a commercial vehicle based off his visual potential." Mr. Ford reported that he has driven straight trucks for 5 years, accumulating 37,500 miles, and buses for 4 years, accumulating 20,000 miles. He holds an operator's license from South Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Aaron L. Fox

Mr. Fox, 37, has a prosthetic left eye due to an infection in 1991. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2021, his ophthalmologist stated, "I believe that Mr. Fox has sufficient vision to perform the tasks to operate a commercial vehicle." Mr. Fox reported that he has driven straight trucks for 9 years, accumulating 450,000 miles, and tractor-trailer combinations for 3 years, accumulating 360,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James H. George

Mr. George, 59, has a cataract in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/15, and in his left eye, blindness. Following an examination in 2020, his optometrist stated, "James George's vision is sufficient to perform the driving tasks required to operate a commercial vehicle." Mr. George reported that he has driven straight trucks for 3 years, accumulating 180,000 miles, and tractor-trailer combinations for 37 years, accumulating 2,516,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes but one conviction for speeding in a CMV; he exceeded the speed limit by 10 miles per hour.

Johnny M. Krupczak

Mr. Krupczak, 55, has corneal and retinal scarring in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2020, his optometrist stated, "Mr. Krupczak has sufficient vision to perform the driving tasks required to operate a commercial motor vehicle." Mr. Krupczak reported that he has driven straight trucks for 30 years, accumulating 150,000 miles, and tractor-trailer combinations for 30 years, accumulating 1,650,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jackie L. Lawson

Mr. Lawson, 55, has corneal scarring in his left eye due to an infection in 2015. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2021, his optometrist stated, "In my medical opinion, Mr. Lawson has sufficient vision to perform the driving task required to operate a commercial vehicle." Mr. Lawson reported that he has driven straight trucks for 10 years, accumulating 260,000 miles, and tractor-trailer combinations for 10 years, accumulating 52,000 miles. He holds a Class AM CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Alec J. Lindgren

Mr. Lindgren, 25, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, hand motion. Following an examination in 2021, his optometrist stated, "That is, in my opinion Alec has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Lindgren reported that he has driven straight trucks for 3 years, accumulating 36,000 miles, tractor-trailer combinations for 5 years, accumulating 250,000 miles, and buses for 1 year, accumulating 5,000 miles. He holds an operator's license from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James M. McCleary

Mr. McCleary, 47, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/15. Following an examination in 2020, his optometrist stated, "I do believe Mr. McCleary has sufficient vision to perform the essential

tasks of driving a commercial vehicle and am recommending renewal of his federal vision waiver." Mr. McCleary reported that he has driven straight trucks for 1 year, accumulating 93,000 miles, and tractor-trailer combinations for 10 years, accumulating 480,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes but one conviction for a moving violation in a CMV; he failed to obey a traffic control device.

Richard A. Parker II

Mr. Parker II, 30, has retinal scarring in his right eye due to a traumatic incident in 1995. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2020, his optometrist stated, "I believe that Richard Parker has sufficient vision to safely drive and operate a commercial vehicle." Mr. Parker reported that he has driven straight trucks for 6 years, accumulating 187,998 miles, and tractor-trailer combinations for 6 years, accumulating 94,002 miles. He holds a Class A CDL from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert B. Sundvor

Mr. Sundvor, 59, has had a retinal detachment in his right eye since 2017. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2021, his optometrist stated, "In my opinion, Mr. Sundvor has sufficient vision to perform the driving tasks required to operate a commercial vehicle safely." Mr. Sundvor reported that he has driven straight trucks for 45 years, accumulating 225,000 miles, and tractor-trailer combinations for 35 years, accumulating 1,500,000 miles. He holds a Class AM CDL from North Dakota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William R. Tessman

Mr. Tessman, 78, has had a retinal deformity in his right eye since birth. The visual acuity in his right eye is 20/45, and in his left eye, 20/25. Following an examination in 2021, his optometrist stated, "Mr. Tessman has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Tessman reported that he has driven straight trucks for 11 years, accumulating 1,265,000 miles, and tractor-trailer combinations for 33 years, accumulating 5,775,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no

crashes and no convictions for moving violations in a CMV.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021-12066 Filed 6-8-21; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2008-0355; FMCSA-2010-0203; FMCSA-2015-0115; FMCSA-2015-0323; FMCSA-2016-0313; FMCSA-2016-0315; FMCSA-2018-0056; FMCSA-2018-0057; FMCSA-2019-0027; FMCSA-2019-0029]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 11 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have “no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.” The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before July 9, 2021.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA-2008-0355, Docket No. FMCSA-2010-0203, Docket No. FMCSA-2015-0115, Docket No. FMCSA-2015-0323, Docket No.

FMCSA-2016-0313, Docket No. FMCSA-2016-0315, Docket No. FMCSA-2018-0056, Docket No. FMCSA-2018-0057, Docket No. FMCSA-2019-0027, or Docket No. FMCSA-2019-0029 using any of the following methods:

- **Federal eRulemaking Portal:** Go to www.regulations.gov/, insert the docket number, FMCSA-2008-0355, FMCSA-2010-0203, FMCSA-2015-0115, FMCSA-2015-0323, FMCSA-2016-0313, FMCSA-2016-0315, FMCSA-2018-0056, FMCSA-2018-0057, FMCSA-2019-0027, or FMCSA-2019-0029 in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click on the “Comment” button. Follow the online instructions for submitting comments.

- **Mail:** Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

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

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-2008-0355, Docket No. FMCSA-2010-0203, Docket No. FMCSA-2015-0115, Docket No. FMCSA-2015-0323, Docket No. FMCSA-2016-0313, Docket No. FMCSA-2016-0315, Docket No. FMCSA-2018-0056, Docket No. FMCSA-2018-0057, Docket No. FMCSA-2019-0027, or Docket No. FMCSA-2019-0029), indicate the specific section of this document to

which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to www.regulations.gov/, insert the docket number, FMCSA-2008-0355, FMCSA-2010-0203, FMCSA-2015-0115, FMCSA-2015-0323, FMCSA-2016-0313, FMCSA-2016-0315, FMCSA-2018-0056, FMCSA-2018-0057, FMCSA-2019-0027, or FMCSA-2019-0029 in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click the “Comment” button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number, FMCSA-2008-0355, FMCSA-2010-0203, FMCSA-2015-0115, FMCSA-2015-0323, FMCSA-2016-0313, FMCSA-2016-0315, FMCSA-2018-0056, FMCSA-2018-0057, FMCSA-2019-0027, or FMCSA-2019-0029 in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.transportation.gov/privacy.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria¹ to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The 11 individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The

Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 11 applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The 11 drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of June and are discussed below. As of June 10, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 10 individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

John D. Archer (MO)
Brian Brown (PA)
Richard Conway Jr. (MO)
Daniel Gast (KS)
Stephen Harmon (WV)
Denton Hineline (WA)
Steve Hunsaker (ID)
Bryan R. Jones (PA)
Jason Lewis (CA)
Elvin Paul Morgan (CA)

The drivers were included in docket number FMCSA–2008–0355, FMCSA–2010–0203, FMCSA–2015–0115, FMCSA–2015–0323, FMCSA–2016–0313, FMCSA–2016–0315, FMCSA–2018–0056, FMCSA–2018–0057, or

FMCSA–2019–0027. Their exemptions are applicable as of June 10, 2021, and will expire on June 10, 2023.

As of June 18, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), Alan Finlayson (AL) has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers.

This driver was included in docket number FMCSA–2019–0029. The exemption is applicable as of June 18, 2021, and will expire on June 18, 2023.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based on its evaluation of the 11 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be

¹ These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy*: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021-12062 Filed 6-8-21; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0379; FMCSA-2014-0382; FMCSA-2016-0008; FMCSA-2016-0011; FMCSA-2016-0313; FMCSA-2018-0054; FMCSA-2018-0057]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 11 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have “no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.” The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on April 30, 2021. The exemptions expire on April 30, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number, FMCSA-2014-0379, FMCSA-2014-0382, FMCSA-2016-0008, FMCSA-2016-0011, FMCSA-2016-0313, FMCSA-2018-0054, or FMCSA-

2018-0057 in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.transportation.gov/privacy.

II. Background

On April 22, 2021, FMCSA published a notice announcing its decision to renew exemptions for 11 individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (86 FR 21431). The public comment period ended on May 24, 2021, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria¹ to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

¹ These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy*: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the 11 renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8).

As of April 30, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 11 individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (86 FR 21431):

Kevin Addington (PA)
Ryan Babler (WI)
Mark Beery (OH)
Jose Cabrera (CA)
Miodrag Djukanovic (IL)
Bradley Hollister (PA)
Sheldon Martin (NY)
Larry Nicholson (NC)
Edgar Snapp (IN)
Michael Shumake (VA)
Daniel Zielinski (OR)

The drivers were included in docket number FMCSA-2014-0379, FMCSA-2014-0382, FMCSA-2016-0008, FMCSA-2016-0011, FMCSA-2016-0313, FMCSA-2018-0054, and FMCSA-2018-0057. Their exemptions were applicable as of April 30, 2021, and will expire on April 30, 2023.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021-12065 Filed 6-8-21; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that are subject to the prohibitions under Executive Order 13959, as amended by Executive Order of June 3, 2021, "Addressing the Threat from Securities Investments That Finance Certain Companies of the People's Republic of China" ("E.O. 13959" or the "Order"), and have been placed on OFAC's Non-SDN Chinese Military-Industrial Complex Companies List (NS-CMIC List). Any purchase or sale of any publicly traded securities, or any publicly traded securities that are derivative of such securities or are designed to provide investment exposure to such securities, of any of these persons, by any United States person in violation of the Order is prohibited.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. Smith, Acting Director, tel.: 202-622-2480; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The NS-CMIC List and additional information concerning OFAC sanctions programs are available on OFAC's website (www.treasury.gov/ofac).

Notice of OFAC Actions

On June 3, 2021, the President determined that the persons listed in the Annex to E.O. 13959, as amended, are subject to the prohibitions set forth in E.O. 13959, as amended. Accordingly, OFAC is placing the following persons on its NS-CMIC List.

Entities

1. AERO ENGINE CORPORATION OF CHINA (a.k.a. AERO ENGINE CORP OF CHINA; a.k.a. CHINA AVIATION ENGINE GROUP CO., LTD; a.k.a. "AECC"), 5 Landianchang South Road Haidian District, Beijing 100097, China; Target Type State-Owned Enterprise; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91110000MA005UCQ5P (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the P.E.O.ple's Republic of China (PRC).

2. AEROSPACE CH UAV CO., LTD (f.k.a. ZHEJIANG NANYANG TECHNOLOGY COMPANY LIMITED), Development Zone, 388, Kai Fa Avenue, Taizhou 318000, China; Equity Ticker 002389 CN; Issuer Name Aerospace CH UAV Co Ltd; ISIN CNE100000N20; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91330000734507783B (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

3. AEROSPACE COMMUNICATIONS HOLDINGS GROUP COMPANY LIMITED (a.k.a. AEROCOM; a.k.a. AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.; f.k.a. AEROSPACE COMMUNICATIONS HOLDINGS COMPANY LIMITED), Block 1, Aerospace Communications Mansion, 138, Jiefang Road, Hangzhou 310009, China; Equity Ticker 600677 CN; Issuer Name Aerospace Communications Holdings Co., Ltd.; ISIN CNE000000BS6; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 913300001429112055 (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

4. AEROSUN CORPORATION (a.k.a. AEROSUN; a.k.a. AEROSUN CORP.), Jiangning Economic Zone, 188, Tianyuan Zhong Road, Nanjing 211100, China; Equity Ticker 600501 CN; Issuer Name Aerosun Corporation; ISIN CNE000001857; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91320000714091899R (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

5. ANHUI GREATWALL MILITARY INDUSTRY COMPANY LIMITED (a.k.a. ANHUI GREAT WALL MILITARY INDUSTRY CO., LTD; a.k.a. ANHUI GREATWALL MILITARY INDUSTRY CO., LTD.; a.k.a. GREATWALL MILITARY; a.k.a. GREATWALL MILITARY INDUSTRY), No. 99 Taoyuan Road, Economic Development Zone, Hefei, China; Economic And Technological Development Zone, 99 Hezhang Road, Hefei 230001, China; Equity Ticker 601606 CN; Issuer Name Anhui Greatwall Military Industry Co., Ltd; ISIN CNE1000036L1; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 9134000070503581XA (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

6. AVIATION INDUSTRY CORPORATION OF CHINA, LTD. (a.k.a. AVIATION INDUSTRY CORP OF CHINA; a.k.a. AVIATION INDUSTRY OF CHINA; a.k.a. "AVIC"), Building 19 Compound A5 Shuguang Xili Chaoyang District, Beijing 100028, China; Issuer Name Aviation Industry Corporation of China, Ltd; ISIN CND10001WLS0; alt. ISIN CND10002HNP1; alt. ISIN CND10002DPC3; Target Type State-Owned Enterprise; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91110000710935732K (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

7. AVIC AVIATION HIGH-TECHNOLOGY COMPANY LIMITED (a.k.a. AVIC AVIATION HIGH-TECHNOLOGY CO., LTD.; a.k.a. AVIC HI-TECH; f.k.a. TONTEC TECHNOLOGY INVESTMENT GROUP COMPANY LIMITED), 1, Yonghe Road, Gangzha District, Nantong 226011, China; Equity Ticker 600862 CN; Issuer Name Tonmac International Co., Ltd.; ISIN CNE000000GZ0; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91320600138299578A (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

8. AVIC HEAVY MACHINERY COMPANY LIMITED (a.k.a. AVIC HEAVY MACHINERY CO., LTD.; f.k.a. GUIZHOU LIYUAN HYDRAULIC CO., LTD.; f.k.a. GUIZHOU LIYUAN HYDRAULIC COMPONENTS CO., LTD.), No. 501, Beiya Road, Wudang District, Guiyang, Guizhou, China; Equity Ticker 600765 CN; Issuer Name Guizhou Liyuan Hydraulic Components Co., Ltd.; ISIN CNE000000N22; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91520000214434146R (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

9. AVIC JONHON OPTRONIC TECHNOLOGY CO., LTD. (a.k.a. JONHON), No. 10, Zhoushan Rd., Luoyang Area, Pilot Free Trade Zone, Luoyang, Henan, China; Equity Ticker 002179 CN; Issuer Name AVIC Jonhon Optronic Technology Co., Ltd.; ISIN CND10003VVT5; alt. ISIN CNE1000007T5; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 914100007457748527 (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

10. AVIC SHENYANG AIRCRAFT COMPANY LIMITED (f.k.a. DONGAN

HEIBAO CO., LTD.; a.k.a. SHENYANG AIRCRAFT CO. LTD.), 1, Lingbei Street, Huanggu District, Shenyang 110850, China; Equity Ticker 600760 CN; Issuer Name Dongan Heibao Co. Ltd.; ISIN CNE000000MH6; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 9137000016309489X2 (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

11. AVIC XI'AN AIRCRAFT INDUSTRY GROUP COMPANY LTD. (a.k.a. AVIC AIRCRAFT CO., LTD.; a.k.a. AVIC XI'AN AIRCRAFT INDUSTRY GROUP CO LTD; a.k.a. XI'AN AIRCRAFT INDUSTRIAL CORP.; a.k.a. XI'AN AIRCRAFT INDUSTRY GROUP CO LTD), No. 1, Xifei Avenue, Yanliang District, Xi'an, Shaanxi, China; Equity Ticker 000768 CN; Issuer Name AVIC Aircraft Co., Ltd.; ISIN CNE000000RF9; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 916100002942059830 (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

12. CHANGSHA JINGJIA MICROELECTRONICS COMPANY LIMITED (a.k.a. CHANGSHA JINGJIA MICROELECTRONICS CO., LTD; a.k.a. JINGJIA MICRO), No.1, Meixihu Road, Yuelu District, Changsha 410205, China; Equity Ticker 300474 CN; Issuer Name Changsha Jingjia Microelectronics Co., Ltd.; alt. Issuer Name Changsha Jingjia Microelectronics Company Limited; ISIN CNE100002664; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 914301007853917172 (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

13. CHINA ACADEMY OF LAUNCH VEHICLE TECHNOLOGY (a.k.a. "CALT"), 1 Nandahongmen Road Fengtai District, Beijing 100076, China; No. 1, South Dahongmen Road, Fengtai District, Beijing 100076, China; Target Type State-Owned Enterprise; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Business Registration Number 100000108000042 (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

14. CHINA AEROSPACE SCIENCE AND INDUSTRY CORPORATION LIMITED (a.k.a. CASIC; a.k.a. CHINA AEROSPACE SCIENCE AND INDUSTRY CORPORATION), No. 8, Fucheng Road, Haidian District, Beijing 100089, China; Issuer Name China Aerospace

Science and Industry Corporation Limited; ISIN CND1000142N4; Target Type State-Owned Enterprise; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91110000710925243K (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

15. CHINA AEROSPACE SCIENCE AND TECHNOLOGY CORPORATION (a.k.a. "CASC"), No. 8, Fucheng Road, Haidian District, Beijing 100048, China; Issuer Name China Aerospace Science and Technology Corporation; ISIN CND1000090Q8; alt. ISIN CND100006HP7; Target Type State-Owned Enterprise; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91110000100014071Q (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

16. CHINA AEROSPACE TIMES ELECTRONICS CO., LTD (f.k.a. LONG MARCH LAUNCH VEHICLE TECHNOLOGY COMPANY LIMITED; a.k.a. "CATEC"), High-Technology Industrial Zone, Economic & Technological Development Zone, Wuhan 430056, China; Equity Ticker 600879 CN; Issuer Name China Aerospace Times Electronics Co., Ltd; ISIN CNE000000J93; alt. ISIN CND10003B821; alt. ISIN CND100034J27; alt. ISIN CND100037514; alt. ISIN CND100032457; alt. ISIN CND10002R795; alt. ISIN CND10003D843; alt. ISIN CND100035G37; alt. ISIN CND100037S23; alt. ISIN CND10002B3Q3; alt. ISIN CND10002T6Q6; alt. ISIN CND100044B23; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91420100177716821Q (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

17. CHINA AVIONICS SYSTEMS COMPANY LIMITED (a.k.a. AVIC AVIONICS; f.k.a. CHINA AVIC ELECTRONICS CO., LTD; f.k.a. CHINA AVIC ELECTRONICS COMPANY LIMITED; a.k.a. CHINA AVIONICS SYSTEMS CO., LTD), Building 20, 8th-9th Floor, 5A, Shuguangxili, Beijing 100028, China; Equity Ticker 600372 CN; Issuer Name China Avionics Systems Company Limited; ISIN CNE0000018C0; alt. ISIN CND100018CL2; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91110000705514765U (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

18. CHINA COMMUNICATIONS CONSTRUCTION GROUP (LIMITED) (a.k.a.

CHINA COMMUNICATIONS CONSTRUCTION GROUP (LTD); a.k.a. CHINA COMMUNICATIONS GROUP CO. LTD; a.k.a. CHINA COMMUNICATIONS GROUP COMPANY LIMITED; a.k.a. "CCCC"), No. 85, Deshengmen Outer Street, Xicheng District, Beijing 100088, China; Issuer Name China Communications Group Co. Ltd; alt. Issuer Name China Communications Construction Group (Ltd.); alt. Issuer Name China Communications Group Company Limited; ISIN CND10003RDS3; alt. ISIN CND100041XX5; alt. ISIN CND1000455C3; alt. ISIN CND100041XW7; alt. ISIN CND1000455B5; Target Type Private Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91110000710933809D (China) [CMIC-EO] (Linked To: CHINA COMMUNICATIONS CONSTRUCTION COMPANY LIMITED).

Identified pursuant to section 1(a)(ii) of E.O. 13959, as amended, for owning or controlling, directly or indirectly, CHINA COMMUNICATIONS CONSTRUCTION COMPANY LIMITED, a person who operates or has operated in the defense and related materiel sector of the economy of the PRC and who has been identified pursuant to E.O. 13959, as amended.

19. CHINA COMMUNICATIONS CONSTRUCTION COMPANY LIMITED (a.k.a. CHINA COMMUNICATIONS CONSTR CO LTD; a.k.a. CHINA COMMUNICATIONS CONSTRUCTION CO LTD; a.k.a. CHINA COMMUNICATIONS CONSTRUCTION COMPANY LTD; a.k.a. "CCCC"), 85, Deshengmen Street, Xicheng District, Beijing 100088, China; Equity Ticker 601800 CN; alt. Equity Ticker 01800 HK; alt. Equity Ticker CYY DE; Issuer Name China Communications Construction Co. Ltd; alt. Issuer Name China Communications Construction Company Limited; alt. Issuer Name China Communications Construction Company Ltd; alt. Issuer Name China Communications Constr Co Ltd; ISIN CND10000GBD8; alt. ISIN CND10001TD67; alt. ISIN CND10002GB63; alt. ISIN CND10001TD75; alt. ISIN US1689261030; alt. ISIN CND10002G6P3; alt. ISIN CND10003T293; alt. ISIN CND100017CS9; alt. ISIN CND10001TD59; alt. ISIN CND10002K094; alt. ISIN CND10002H1Z2; alt. ISIN CND10003R421; alt. ISIN CND10002KKV9; alt. ISIN CND10002DZZ3; alt. ISIN CND10003KT58; alt. ISIN CND100043Z00; alt. ISIN CNE1000002F5; alt. ISIN CND10002G601; alt. ISIN CND10002GB71; alt. ISIN CNE100001FN5; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91110000710934369E (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

20. CHINA ELECTRONICS CORPORATION (a.k.a. "CEC"), 19F, Building 1, No. 66A, Zhongguancun East Road, Haidian District, Beijing 100190, China;

Issuer Name China Electronics Corporation; ISIN CND10000KG49; alt. ISIN CND10002F8S4; Target Type State-Owned Enterprise; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Legal Entity Number 300300PV91RY9GH3CT16; Unified Social Credit Code (USCC) 91110000100010249W (China) [CMIC-EO] (Linked To: NANJING PANDA ELECTRONICS COMPANY LIMITED).

Identified pursuant to section 1(a)(ii) of E.O. 13959, as amended, for owning or controlling, directly or indirectly, NANJING PANDA ELECTRONICS COMPANY LIMITED, a person who operates or has operated in the defense and related materiel sector of the economy of the PRC and who has been identified pursuant to E.O. 13959, as amended.

21. CHINA ELECTRONICS TECHNOLOGY GROUP CORPORATION (a.k.a. "CETC"), No. 27, Wanshou Road, Haidian District, Beijing 100846, China; Target Type State-Owned Enterprise; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91110000710929498G (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

22. CHINA GENERAL NUCLEAR POWER CORPORATION (a.k.a. CHINA GENERAL NUCLEAR POWER CORP; a.k.a. "CGN"), 33F, South Building, China General Nuclear Building, No. 2002 Shennan Avenue, Futian District, Shenzhen, Guangdong, China; Issuer Name China General Nuclear Power Corporation; ISIN CND10003XXN0; alt. ISIN CND1000248C2; alt. ISIN CND10003GZY7; alt. ISIN CND1000363K2; Target Type Private Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 9144030010001694XX (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

23. CHINA MARINE INFORMATION ELECTRONICS COMPANY LIMITED (f.k.a. CEC CORECAST CORPORATION LIMITED; a.k.a. CHINA MARINE INFORMATION ELECTRONICS CO LTD; f.k.a. CHINA SHIPBUILDING INDUSTRY GROUP MARINE DEFENSE AND INFORMATION CONFRONTATION CO., LTD.), 4F Zhongshangxin Mansion 34 Xueyuan South Road, Beijing 100082, China; Equity Ticker 600764 CN; Issuer Name China Marine Information Electronics Company Limited; ISIN CNE000000N30; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91110000224344507P (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

24. CHINA MOBILE COMMUNICATIONS GROUP CO., LTD. (a.k.a. CHINA MOBILE),

No. 29, Financial Street, Xicheng District, Beijing 100032, China; Target Type Private Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 911100007109250324 (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

25. CHINA MOBILE LIMITED (a.k.a. CHINA MOBILE LTD), 60th Floor, The Center, 99 Queens Road Central, Hong Kong, China; Equity Ticker CHL US; alt. Equity Ticker 941 HK; alt. Equity Ticker CHL RU; alt. Equity Ticker CTMA DE; alt. Equity Ticker K3PD SG; alt. Equity Ticker CTM DE; alt. Equity Ticker C1HL34 BR; alt. Equity Ticker CHL AR; Issuer Name China Mobile Limited; alt. Issuer Name China Mobile Ltd; ISIN US16941M1099; alt. ISIN HK0941009539; alt. ISIN BRC1HLBDR003; alt. ISIN ARDEUT111812; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021 [CMIC-EO] (Linked To: CHINA MOBILE COMMUNICATIONS GROUP CO., LTD.).

Identified pursuant to section 1(a)(ii) of E.O. 13959, as amended, for being owned or controlled by, directly or indirectly, CHINA MOBILE COMMUNICATIONS GROUP CO., LTD., a person who operates or has operated in the defense and related materiel sector of the economy of the PRC and who has been identified pursuant to E.O. 13959, as amended.

26. CHINA NATIONAL NUCLEAR CORPORATION (a.k.a. CHINA NATIONAL NUCLEAR CORP; a.k.a. "CNNC"), No. 1, Nansan Lane, Sanlihe, Xicheng District, Beijing 100822, China; Issuer Name China National Nuclear Corporation; ISIN CND10000KRQ8; alt. ISIN CND100005B38; alt. ISIN CND10002J9T6; alt. ISIN CND100027TJ1; alt. ISIN CND10002DLF5; alt. ISIN CND10003RXC5; alt. ISIN CND10002J9V2; alt. ISIN CND100005B20; alt. ISIN CND100025BB0; alt. ISIN CND10003VCD9; alt. ISIN CND10003RXB7; alt. ISIN CND10001ZPR6; Target Type Private Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91110000100009563N (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

27. CHINA NATIONAL OFFSHORE OIL CORPORATION (a.k.a. CHINA NATIONAL OFFSHORE OIL CORP.; a.k.a. CNOOC), No. 25, Chaoyangmen North Street, Dongcheng District, Beijing 100010, China; Target Type State-Owned Enterprise; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Legal Entity Number 300300AY5BEBYDR2F31; Unified Social Credit Code (USCC) 91110000100001043E (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having

operated in the defense and related materiel sector of the economy of the PRC.

28. CHINA NORTH INDUSTRIES GROUP CORPORATION LIMITED (a.k.a. CHINA NORTH INDUSTRIES GROUP CO. LTD; a.k.a. CHINA NORTH INDUSTRIES GROUP CORPORATION; a.k.a. NORINCO; a.k.a. NORINCO GROUP; a.k.a. "CNIGC"), No. 46, Sanlihe Road, Xicheng District, Beijing 100821, China; Issuer Name China North Industries Group Corporation Limited; alt. Issuer Name China North Industries Group Co. Ltd; ISIN CND10001PXG4; alt. ISIN CND10000KPW0; alt. ISIN CND10000KSK9; alt. ISIN CND1000133M5; Target Type Private Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91110000710924910P (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

29. CHINA NUCLEAR ENGINEERING CORPORATION LIMITED (a.k.a. CHINA NATIONAL ENGINEERING & CONSTRUCTION CORPORATION LIMITED; a.k.a. CHINA NUCLEAR ENGINEERING & CONSTRUCTION CORP LTD; a.k.a. CHINA NUCLEAR ENGINEERING CORPORATION LIMITED; a.k.a. "CNEC"; a.k.a. "CNECC"), No. 12 Chegongzhuang Avenue, Xicheng District, Beijing 100037, China; Equity Ticker 601611 CN; Issuer Name China Nuclear Engineering Corporation Limited; ISIN CNE100002896; alt. ISIN CND10003XJ14; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91110000717828569P (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

30. CHINA RAILWAY CONSTRUCTION CORPORATION LIMITED (a.k.a. "CRCC"), East Yard No. 40, Fuxing Road, Haidian District, Beijing 100855, China; Equity Ticker 601186 CN; alt. Equity Ticker 1186 HK; Issuer Name China Railway Construction Corporation Limited; ISIN CNE1000009T1; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91110000710935150D (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

31. CHINA SATELLITE COMMUNICATIONS CO., LTD. (a.k.a. CHINA SATCOM), China Satellite Communications Tower, Building A, 21st Floor, 65, Zhichun Road, Haidian District, Beijing 100190, China; Equity Ticker 601698 CN; Issuer Name China Satellite Communications Co., Ltd.; ISIN CNE100003PX9; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date

(CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91110000710929113P (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

32. CHINA SHIPBUILDING INDUSTRY COMPANY LIMITED (a.k.a. CHINA SHIPBUILDING INDUSTRY CO LTD; a.k.a. "CSICL"), 72 Kunminghu South Road, Haidian District, Beijing 100097, China; Equity Ticker 601989 CN; Issuer Name CHINA SHIPBUILDING INDUSTRY COMPANY LIMITED; ISIN CNE100000J75; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91110000710935329H (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

33. CHINA SHIPBUILDING INDUSTRY GROUP POWER COMPANY LIMITED (a.k.a. CHINA SHIPBUILDING INDUSTRY GROUP POWER; a.k.a. CHINA SHIPBUILDING INDUSTRY GROUP POWER CO LTD; a.k.a. CSIC POWER; f.k.a. FENG FAN CO., LTD.; a.k.a. "CSICP"), 72, Kunminghu South Road, Haidian District, Beijing 100097, China; Equity Ticker 600482 CN; Issuer Name China Shipbuilding Industry Group Power; ISIN CNE000001KB1; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 911306007109266097 (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

34. CHINA SOUTH INDUSTRIES GROUP CORPORATION (a.k.a. CHINA SOUTH INDUSTRIES GROUP CO., LTD.; a.k.a. CHINA SOUTH INDUSTRIES GROUP CORPORATION; a.k.a. "CSGC"; a.k.a. "CSIGC"), No. 46, Sanlihe Road, Xicheng District, Beijing 100032, China; No. 10 Yard, Chedaogou, Haidian District, Beijing 100089, China; Issuer Name China South Industries Group Co., Ltd.; alt. Issuer Name China South Industries Group Corporation; ISIN CND10000KTG5; alt. ISIN CND10000K5V9; alt. ISIN CND10000KTF7; alt. ISIN CND10000GGC9; alt. ISIN CND10000K0B2; alt. ISIN CND10000GGD7; alt. ISIN CND10000KTD2; alt. ISIN CND10000K5W7; alt. ISIN CND10001TRP9; alt. ISIN CND10001TRQ7; Target Type Private Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91110000710924929L (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

35. CHINA SPACESAT CO., LTD. (a.k.a. CHINA SPACESAT), Shenzhou Technology Mansion, 12th Floor, 31, Zhongguancun South Avenue, Beijing 100081, China; 12F

Shenzhou Building, 31 Zhongguanchun South Street, Haidian District, Beijing 100081, China; Equity Ticker 600118 CN; Issuer Name China Spacesat Co., Ltd.; ISIN CNE000000SM3; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 911100001000274544 (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

36. CHINA STATE SHIPBUILDING CORPORATION LIMITED (a.k.a. CHINA SHIPBUILDING CORPORATION; a.k.a. CHINA STATE SHIPBUILDING CORPORATION; a.k.a. CHINA STATE SHIPBUILDING CORPORATION CO. LTD; a.k.a. "CSC"; a.k.a. "CSSC"), No. 1, Pudong Avenue, Pilot Free Trade Zone, Pudong New District, Shanghai 200135, China; Issuer Name China State Shipbuilding Corporation; alt. Issuer Name China State Shipbuilding Corporation Co. Ltd; ISIN CND100005C60; alt. ISIN CND10000KTB6; alt. ISIN CND10000KT93; alt. ISIN CND100005MX3; alt. ISIN CND100005MX3; alt. ISIN CND10000LD58; alt. ISIN CND10000LLH8; Target Type Private Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91310000710924478P (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

37. CHINA TELECOM CORPORATION LIMITED (a.k.a. CHINA TELECOM; a.k.a. CHINA TELECOM CO., LTD; a.k.a. CHINA TELECOM CORP LTD), 31 Jinrong Street, Xicheng District, Beijing 100033, China; Equity Ticker CHA US; alt. Equity Ticker CHA RU; alt. Equity Ticker ZCHA DE; alt. Equity Ticker CHA AR; alt. Equity Ticker K3ED SG; alt. Equity Ticker 0728 HK; alt. Equity Ticker ZCH DE; Issuer Name China Telecom Corporation Limited; alt. Issuer Name China Telecom Corp Ltd; alt. Issuer Name China Telecom Co., Ltd; alt. Issuer Name China Telecom Corporation Limited.Co.Ltd; ISIN US1694261033; alt. ISIN CNE1000002V2; alt. ISIN CND100020NC4; alt. ISIN CND1000248G3; alt. ISIN CND10003ND87; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 9111000071093019X7 (China) [CMIC-EO] (Linked To: CHINA TELECOMMUNICATIONS CORPORATION).

Identified pursuant to section 1(a)(ii) of E.O. 13959, as amended, for being owned or controlled by, directly or indirectly, CHINA TELECOMMUNICATIONS CORPORATION, a person who operates or has operated in the defense and related materiel sector of the economy of the PRC and who has been identified pursuant to E.O. 13959, as amended.

38. CHINA TELECOMMUNICATIONS CORPORATION (a.k.a. CHINA TELECOM;

a.k.a. CHINA TELECOM GROUP CO., LTD.), 31 Jinrong Street, Xicheng District, Beijing 100033, China; Target Type Private Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91110000100017707H (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

39. CHINA UNICOM (HONG KONG) LIMITED (f.k.a. CHINA UNICOM LIMITED), 75th Floor, The Center, 99 Queen's Road Central, Hong Kong, China; Equity Ticker CHU US; alt. Equity Ticker 762 HK; alt. Equity Ticker XCIA DE; alt. Equity Ticker K3ID SG; alt. Equity Ticker XCI DE; Issuer Name China Unicom (Hong Kong) Limited; ISIN US16945R1041; alt. ISIN HK0000049939; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021 [CMIC-EO] (Linked To: CHINA UNITED NETWORK COMMUNICATIONS GROUP CO., LTD.).

Identified pursuant to section 1(a)(ii) of E.O. 13959, as amended, for being owned or controlled by, directly or indirectly, CHINA UNITED NETWORK COMMUNICATIONS GROUP CO., LTD., a person who operates or has operated in the defense and related materiel sector of the economy of the PRC and who has been identified pursuant to E.O. 13959, as amended.

40. CHINA UNITED NETWORK COMMUNICATIONS GROUP CO., LTD. (a.k.a. CHINA UNICOM; a.k.a. CHINA UNITED NETWORK COMMUNICATIONS GROUP COMPANY LIMITED; f.k.a. CHINA UNITED TELECOMMUNICATIONS CORPORATION), No. 21, Financial Street, Xicheng District, Beijing 100033, China; Target Type Private Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91110000MA001HYK9X (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

41. CNOOC LIMITED (a.k.a. CNOOC LTD), Bank of China Tower, 65th Floor, 1, Garden Road, Hong Kong, China; Equity Ticker 00083 HK; alt. Equity Ticker CNU CA; alt. Equity Ticker NC2B DE; alt. Equity Ticker CEO US; Issuer Name CNOOC Limited; alt. Issuer Name CNOOC Ltd; ISIN HK0883013259; alt. ISIN US1261321095; alt. ISIN HK2998013240; alt. ISIN BRC1EODR004; alt. ISIN HK0883013259; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Company Number 0685974 (Hong Kong); Legal Entity Number 549300XIVJCBIGMRUD48 [CMIC-EO] (Linked To: CHINA NATIONAL OFFSHORE OIL CORPORATION).

Identified pursuant to section 1(a)(ii) of E.O. 13959, as amended, for being owned or controlled by, directly or indirectly, CHINA

NATIONAL OFFSHORE OIL

CORPORATION, a person who operates or has operated in the defense and related materiel sector of the economy of the PRC and who has been identified pursuant to E.O. 13959, as amended.

42. COSTAR GROUP CO., LTD. (a.k.a. COSTAR GROUP CO; f.k.a. LIDA OPTICAL & ELECTRONIC CO., LTD.), 508, Gongye Road, Nanyang 473003, China; Equity Ticker 002189 CN; Issuer Name Costar Group Co; ISIN CNE100000882; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91410000615301803D (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

43. CSSC OFFSHORE & MARINE ENGINEERING (GROUP) COMPANY LIMITED (a.k.a. COMEC; f.k.a. GUANGZHOU SHIPYARD INTERNATIONAL COMPANY LIMITED), 40, South Fang Cun Road, Liwan District, Guangzhou 510382, China; Equity Ticker 00317 HK; alt. Equity Ticker 600685 CN; Issuer Name CSSC Offshore & Marine Engineering (Group) Company Limited; ISIN CNE100000395; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91440101190499390U (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

44. FUJIAN TORCH ELECTRON TECHNOLOGY CO., LTD. (a.k.a. TORCH ELECTRON), Hi-Tech Industrial Park, Jiangnan Park, 4, Zihua Road, Licheng district, Quanzhou 362000, China; Equity Ticker 603678 CN; Issuer Name Fujian Torch Electron Technology Co., Ltd; ISIN CNE100001TY3; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 913500001562023628 (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

45. GUIZHOU SPACE APPLIANCE CO., LTD (a.k.a. "SACO"), 7, Honghe Road, Xiaohe District, Guiyang 550009, China; Equity Ticker 002025 CN; Issuer Name Guizhou Space Appliance Co., Ltd; ISIN CNE000001KGO; alt. ISIN CN000A0B7NS3; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91520000730980020A (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

46. HANGZHOU HIKVISION DIGITAL TECHNOLOGY CO., LTD. (a.k.a. HANGZHOU HIKVISION DIGITAL

TECHNOLOGY; a.k.a. HIKVISION), 555, Qianmo Road, Binjiang District, Hangzhou 310051, China; Equity Ticker 002415 CN; Issuer Name Hangzhou Hikvision Digital Technology; ISIN CNE100000PM8; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91330000733796106P (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the surveillance technology sector of the economy of the PRC.

47. HUAWEI INVESTMENT & HOLDING CO., LTD. (a.k.a. HUAWEI INVESTMENT AND HOLDING CO., LTD.), Building 1, Area B, Bantian Huawei Base, Longgang District, Guangdong, Shenzhen, China; Issuer Name Huawei Investment & Holding Co., Ltd.; alt. Issuer Name Huawei Investment and Holding Co., Ltd.; ISIN CND10003D0F9; alt. ISIN CND100035KT2; alt. ISIN CND10002K3Y6; alt. ISIN CND10002J7T0; alt. ISIN CND1000336F8; alt. ISIN CND1000439R5; Target Type Private Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91440300746645251H (China) [CMIC-EO] (Linked To: HUAWEI TECHNOLOGIES CO., LTD.).

Identified pursuant to section 1(a)(ii) of E.O. 13959, as amended, for owning or controlling, directly or indirectly, HUAWEI TECHNOLOGIES CO., LTD., a person who operates or has operated in the defense and related materiel sector of the economy of the PRC, and operates or has operated in the surveillance technology sector of the economy of the PRC, and who has been identified pursuant to E.O. 13959, as amended.

48. HUAWEI TECHNOLOGIES CO., LTD. (a.k.a. HUAWEI INVESTMENT & HOLDING CO LTD), Huawei Headquarter Office Building, Bantian, Longgang District, Guangdong, Shenzhen 518129, China; Target Type Private Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 914403001922038216 (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the surveillance technology sector of the economy of the PRC, and for operating or having operated in the surveillance technology sector of the economy of the PRC.

49. INNER MONGOLIA FIRST MACHINERY GROUP CO., LTD. (f.k.a. BAOTOU BEIFANG CHUANGYE COMPANY LIMITED; a.k.a. FIRMACO), Minzhu Road, Qingshan District, Baotou 014032, China; Equity Ticker 600967 CN; Issuer Name Baotou Beifang Chuangye Co., Ltd.; ISIN CNE000001HP7; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91150000720180740Y (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having

operated in the defense and related materiel sector of the economy of the PRC.

50. INSPUR GROUP CO., LTD. (a.k.a. INSPUR GROUP), No. 1036, High-Tech Inspur Road, Jinan, Shandong 250101, China; Target Type Private Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 913700001630477270 (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

51. JIANGXI HONGDU AVIATION INDUSTRY CO., LTD. (a.k.a. "HDAA"), P.O. Box 5001-500, Nanchang 330024, China; Xinxi Bridge Road Qingyunpu District, Nanchang 330024, China; Equity Ticker 600316 CN; Issuer Name Jiangxi Hongdu Aviation Industry Co., Ltd.; ISIN CNE0000015N3; alt. ISIN CND10001KJ52; alt. ISIN CND10001KHB9; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91360000705515290C (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

52. NANJING PANDA ELECTRONICS COMPANY LIMITED (a.k.a. NANJING PANDA; a.k.a. NANJING PANDA ELECTRONIC CO. LTD.), 7, Jingtuan Road, Nanjing 210033, China; Equity Ticker 600775 CN; alt. Equity Ticker 00553 HK; alt. Equity Ticker NNJ DE; Issuer Name Nanjing Panda Electr. Co. Ltd.; alt. Issuer Name Nanjing Panda Electronic Co. Ltd; alt. Issuer Name Nanjing Panda Electronics Company Limited; ISIN CNE1000003T4; alt. ISIN CN0009003921; alt. ISIN CNE000000NB7; alt. ISIN CN0005815195; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91320100134974572K (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

53. NORTH NAVIGATION CONTROL TECHNOLOGY CO., LTD. (f.k.a. BEIJING NORTH PHENIX INTELLIGENCE TECHNOLOGY CO., LTD.; f.k.a. CHINA NORTH OPTICAL-ELECTRICAL TECHNOLOGY CO., LTD.), No. 2, Kechuang 15 Street, Economic Technology Development Zone, Beijing, China; Equity Ticker 600435 CN; Issuer Name Beijing North Phenix Intelligence Technology Co., Ltd; ISIN CNE000001F88; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 911100007226144851 (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

54. PANDA ELECTRONICS GROUP CO., LTD. (a.k.a. PANDA ELECTRONICS GROUP LIMITED), No. 301, Zhongshan East Road, Xuanwu District, Nanjing, Jiangsu 210002, China; Target Type State-Owned Enterprise; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 913201921348831521 (China) [CMIC-EO].

Identified pursuant to sections 1(a)(i) and 1(a)(ii) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC, and for owning or controlling, directly or indirectly, a person who operates or has operated in the defense and related materiel sector of the economy of the PRC.

55. PROVEN GLORY CAPITAL LIMITED (a.k.a. PROVEN GLORY), 263 Main Street, Road Town VG11100, Virgin Islands, British; Issuer Name Proven Glory Capital Limited; ISIN XS1809220830; alt. ISIN XS1808982398; alt. ISIN XS1808982471; alt. ISIN XS1567423501; alt. ISIN XS1567423766; alt. ISIN XS1809220913; Target Type Private Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021 [CMIC-EO] (Linked To: HUAWEI INVESTMENT & HOLDING CO., LTD.).

Identified pursuant to section 1(a)(ii) of E.O. 13959, as amended, for being owned or controlled by, directly or indirectly, HUAWEI INVESTMENT & HOLDING CO., LTD., a person who has been identified pursuant to E.O. 13959, as amended, for owning or controlling, directly or indirectly, HUAWEI TECHNOLOGIES CO., LTD., a person who operates or has operated in the defense and related materiel sector of the economy of the PRC, and who has been identified pursuant to E.O. 13959, as amended.

56. PROVEN HONOUR CAPITAL LIMITED (a.k.a. PROVEN HONOUR; a.k.a. PROVEN HONOUR CAPITAL LTD), C/O Vistra Corporate Services Centre, Wickhams Cay II, Road Town VG1110, Virgin Islands, British; Issuer Name Proven Honour Capital Ltd; alt. Issuer Name Proven Honour Capital Limited; ISIN XS1233275194; alt. ISIN HK0000216777; alt. ISIN XS1401816761; alt. ISIN HK0000111952; Target Type Private Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021 [CMIC-EO] (Linked To: HUAWEI INVESTMENT & HOLDING CO., LTD.).

Identified pursuant to section 1(a)(ii) of E.O. 13959, as amended, for being owned or controlled by, directly or indirectly, HUAWEI INVESTMENT & HOLDING CO., LTD., a person who has been identified pursuant to E.O. 13959, as amended, for owning or controlling, directly or indirectly, HUAWEI TECHNOLOGIES CO., LTD., a person who operates or has operated in the defense and related materiel sector of the economy of the PRC, and who has been identified pursuant to E.O. 13959, as amended.

57. SEMICONDUCTOR MANUFACTURING INTERNATIONAL CORPORATION (a.k.a. SEMICONDUCTOR MANUFACTURING INTERNATIONAL CORPORATION CO., LTD; a.k.a. SEMICONDUCTOR MANUFACTURING INTERNATIONAL CORPORATION LIMITED; a.k.a. SEMICONDUCTOR MFG INTL CORP; a.k.a. "SMIC"), 18, Zhangjiang Road, Pudong New Area, Shanghai 201203, China; Cayman Islands; Equity Ticker 688981 CN; alt. Equity Ticker 00981 HK; alt. Equity Ticker MKN1 DE; alt. Equity Ticker MKN2 DE; Issuer Name Semiconductor Manufacturing International Corporation; alt. Issuer Name Semiconductor Manufacturing International Corporation Limited; alt. Issuer Name Semiconductor Manufacturing International Corporation Co., Ltd; ISIN KYG8020E1199; alt. ISIN XS1432320429; alt. ISIN US81663N2062; alt. ISIN XS2101828452; alt. ISIN KYG8020E1017; alt. ISIN XS1730881247; alt. ISIN KYG802041031; alt. ISIN CNE1000041W8; alt. ISIN CND100022N41; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021 [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

58. SHAANXI ZHONGTIAN ROCKET TECHNOLOGY COMPANY LIMITED (a.k.a. SHAANXI ZHONGTIAN ROCKET TECHNOLOGY CO., LTD), Xi'an, China; Equity Ticker 003009 CN; Issuer Name Shaanxi Zhongtian Rocket Technology Co., Ltd; ISIN CNE1000046W7; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91610000741252408P (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

59. ZHONGHANG ELECTRONIC MEASURING INSTRUMENTS COMPANY LIMITED (a.k.a. AVIC ZEMIC; a.k.a. ZEMIC; a.k.a. ZHONGHANG ELECTRONIC MEASURING INSTRUMENTS CO., LTD), High-Tech Industrial Development Zone, 166, West Avenue, Xi'an 710119, China; Equity Ticker 300114 CN; Issuer Name Zhonghang Electronic Measuring Instruments Co., Ltd; ISIN CNE100000T08; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91610000745016111K (China) [CMIC-EO].

Identified pursuant to section 1(a)(i) of E.O. 13959, as amended, for operating or having operated in the defense and related materiel sector of the economy of the PRC.

Dated: June 3, 2021.

Bradley T. Smith,
Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.
[FR Doc. 2021-12035 Filed 6-8-21; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Special Projects Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, July 8, 2021.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1-888-912-1227 or 202-317-4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be held Thursday, July 8, 2021, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Antoinette Ross. For more information please contact Antoinette Ross at 1-888-912-1227 or 202-317-4110, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: <http://www.improveirs.org>. The agenda will include various IRS issues.

Dated: June 4, 2021.

Kevin Brown,
Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021-12095 Filed 6-8-21; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, July 22, 2021.

FOR FURTHER INFORMATION CONTACT: Gilbert Martinez at 1-888-912-1227 or (737) 800-4060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, July 22, 2021, at 1:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information please contact Gilbert Martinez at 1-888-912-1227 or (737-800-4060), or write TAP Office 3651 S IH-35, STOP 1005 AUSC, Austin, TX 78741, or post comments to the website: <http://www.improveirs.org>.

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: June 4, 2021.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021-12099 Filed 6-8-21; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 13, 2021.

FOR FURTHER INFORMATION CONTACT: Rosalind Matherne at 1-888-912-1227 or 202-317-4115.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Lines Project Committee will be held Tuesday, July 13, 2021 at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements

for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Rosalind Matherne. For more information please contact Rosalind Matherne at 1-888-912-1227 or 202-317-4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: <http://www.improveirs.org>. The agenda will include various IRS issues.

Dated: June 4, 2021.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021-12097 Filed 6-8-21; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will still be held via teleconference.

DATES: The meeting will be held Tuesday, July 13, 2021.

FOR FURTHER INFORMATION CONTACT: Conchata Holloway at 1-888-912-1227 or 336-690-6217.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Tuesday, July 13, 2021, at 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Conchata Holloway. For more information please contact Conchata Holloway at 1-888-912-1227 or 336-690-6217, or write TAP Office, 4905 Koger Boulevard, Greensboro, NC 27407-2734 or contact us at the website: <http://www.improveirs.org>. The agenda will include various IRS issues.

Dated: June 4, 2021.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021-12098 Filed 6-8-21; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0176]

Agency Information Collection Activity Under OMB Review: Certification of Training Hours, Wages, and Progress

AGENCY: Veterans Benefits

Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review Open for Public Comments" or by using the search function. Refer to "OMB Control No. 2900-0176."

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266-4688 or email maribel.aponte@va.gov. Please refer to "OMB Control No. 2900-0176" in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 501(a), and 38 U.S.C. 3677.

Title: Certification of Training Hours, Wages, and Progress, VA Form 28-1905c.

OMB Control Number: 2900-0176.

Type of Review: Reinstatement of a previously approved collection.

Abstract: VA Form 28-1905c, Certification of Training Hours, Wages, and Progress is used to maintain adequate records for on-the-job and other specialized training programs to include the claimant's monthly progress and attendance under 38 U.S.C. 3677.

This information is essential to track the type and hours of training, as well as the rating of the claimant's performance toward the completion of his or her training program under 38 U.S.C. Chapter 31 and 38 U.S.C Chapter 35. Without the information gathered on this form, benefits could be delayed under 38 U.S.C. 501(a).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FRN 65, on April 7, 2021, page 18122.

Affected Public: Individuals or Households.

Estimated Annual Burden: 400 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,600.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021-12106 Filed 6-8-21; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0760]

Agency Information Collection Activity Under OMB Review: Paralympics & Olympics Monthly Assistance Allowance Application and Certification

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/

PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Refer to "OMB Control No. 2900-0760."

FOR FURTHER INFORMATION CONTACT:

Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266-4688 or email maribel.aponte@va.gov. Please refer to "OMB Control No. 2900-0760" in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501-21.

Title: Paralympics & Olympics Monthly Assistance Allowance Application and Certification, VA Forms 0918a & 0918b.

OMB Control Number: 2900-0760.

Type of Review: Reinstatement with change of a previously approved collection.

Abstract: Section 703 of the Veterans' Benefits Improvement Act of 2008, Public Law 110-389, authorizes the Department of Veterans Affairs (VA) to administer a monthly assistance allowance to a veteran with a service-connected or non-service-connected disability if the veteran is competing for a slot on or selected for the United States Paralympics or Olympics team or is residing at a United States Paralympics or Olympics training center. The information collected will be used to certify eligibility for the monthly assistance allowance, verify the veteran's mailing address, confirm that he or she has been accepted by the Paralympics or Olympics to compete in a specific Paralympic or Olympic sport, and determine their marital status and number of dependents for the purpose of assessing payment amounts.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 85 FR 193 on October 5, 2020, pages 62812 and 62813.

Affected Public: Individuals or Households.

Estimated Annual Burden: 50 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 100.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021-12100 Filed 6-8-21; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0166]

Agency Information Collection Activity: Application for Ordinary Life

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 9, 2021.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0166" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT:

Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266-4688 or email maribel.aponte@va.gov. Please refer to "OMB Control No. 2900-0166" 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: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Application for Ordinary Life—VA Form 29–8700, 29–8700a, 29–8700b, 29–8700c, 29–8700d, 29–8700e, 29–8701, 29–8701a, 29–8701b, 29–8701c, 29–8701d, 29–8701e, 29–8485 and 29–8485a.

OMB Control Number: 2900–0166.

Type of Review: Reinstatement of a currently approved collection.

Abstract: These forms are used by the policyholder to apply for replacement insurance for Modified Life Reduced at Age 65 and 70. The information is required by law, 38 U.S.C. Section 1904. The expiration date is being added to the forms.

Affected Public: Individuals and households.

Estimated Annual Burden: 1,284 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 15,400.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–12055 Filed 6–8–21; 8:45 am]

BILLING CODE 8320–01–P



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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Neuse River Waterdog, Endangered Species Status for Carolina Madtom, and Designations of Critical Habitat; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R4-ES-2018-0092;
FF09E21000 FXES11110900000 212]

RIN 1018-BC28

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Neuse River Waterdog, Endangered Species Status for Carolina Madtom, and Designations of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), list two North Carolina species, the Carolina madtom (*Noturus furiosus*) as endangered, and the Neuse River waterdog (*Necturus lewisi*) as threatened, under the Endangered Species Act of 1973 (Act), as amended. We also issue a rule under section 4(d) of the Act for the Neuse River waterdog, to provide for the conservation of this species. In addition, we designate critical habitat for both species under the Act. For the Carolina madtom, approximately 257 river miles (mi) (414 river kilometers (km)) fall within 7 units of critical habitat in Durham, Edgecombe, Franklin, Granville, Halifax, Johnston, Jones, Nash, Orange, Vance, Warren, and Wilson Counties, North Carolina. For the Neuse River waterdog, approximately 779 river mi (1,254 river km) fall within 18 units of critical habitat in Craven, Durham, Edgecombe, Franklin, Granville, Greene, Halifax, Johnston, Jones, Lenoir, Nash, Orange, Person, Pitt, Wake, Warren, Wayne, and Wilson Counties, North Carolina. This rule extends the Act's protections to these species and their designated critical habitats.

DATES: This rule is effective July 9, 2021.

ADDRESSES: This final rule is available on the internet at <http://www.regulations.gov>. Comments and materials we received, as well as some supporting documentation we used in preparing this rule, are available for public inspection at <http://www.regulations.gov>. All of the comments, materials, and documentation that we considered in this rulemaking are available at <http://www.regulations.gov> at Docket No. FWS-R4-ES-2018-0092.

For the critical habitat designation, the coordinates or plot points or both

from which the maps are generated are included in the administrative record and are available at <http://www.regulations.gov> at Docket No. FWS-R4-ES-2018-0092, and at the Raleigh Ecological Services Field Office (<https://www.fws.gov/raleigh>; street address provided above). Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Fish and Wildlife Service website and Field Office identified above, and may also be included in the preamble and at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Pete Benjamin, Field Supervisor, U.S. Fish and Wildlife Service, Raleigh Ecological Services Field Office, 551F Pylon Drive, Raleigh, NC 27606; telephone 919-816-6408. 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 one 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. Whenever any species is listed as a threatened species, the Secretary shall issue such regulations as he or she deems necessary and advisable to provide for the conservation of such species. In addition, the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1) of the Act for endangered species. 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. This final rule: (1) Lists the Carolina madtom as endangered, (2) designates critical habitat for the Carolina madtom, (3) lists the Neuse River waterdog as threatened, (4) issues a rule under section 4(d) of the Act for the Neuse River waterdog, and (5) designates critical habitat for the Neuse River waterdog.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The

present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that habitat degradation (Factor A), resulting from the cumulative impacts of land use change and associated watershed-level effects on water quality, water quantity, habitat connectivity, and instream habitat suitability, poses the largest risk to the future viability of both species. This stressor is primarily related to habitat changes: The buildup of fine sediments, the loss of flowing water, instream habitat fragmentation, and impairment of water quality, and it is exacerbated by the effects of climate change (Factor E). The Carolina madtom is also impacted by predation from flathead catfish (Factor C). There are no existing regulatory mechanisms that ameliorate or reduce these threats such that the species do not warrant listing (Factor D).

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

Economic analysis. In accordance with section 4(b)(2) of the Act, we prepared an economic analysis of the impacts of designating critical habitat for the Carolina madtom and the Neuse River waterdog. We published the announcement of, and solicited public comments on, the draft economic analyses (84 FR 23644; May 22, 2019). We received no comments on the draft economic analyses and adopted the draft economic analyses as final.

Peer review and public comments. During the proposed rule stage, we sought the expert opinions of 11 appropriate specialists regarding the species status assessment report. We received responses from five specialists, which informed our determinations. Information we received from peer review is incorporated into this final rule. We also considered all comments and information we received from the public during two comment periods.

Previous Federal Actions

Please refer to the proposed listing and critical habitat rule (84 FR 23644; May 22, 2019) for the Carolina madtom and Neuse River waterdog, and the document reopening the May 22, 2019, proposed rule's public comment period (85 FR 45839; July 30, 2020), for detailed descriptions of previous Federal actions concerning these species.

Supporting Documents

Species status assessment (SSA) teams prepared SSA reports for the Carolina madtom and Neuse River waterdog. The SSA teams were composed of Service biologists, in consultation with other species experts. The SSA reports each represent 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 SSA reports and other materials relating to this rule can be found on the Service's Southeast Region website at <https://www.fws.gov/southeast/>, at <http://www.regulations.gov> under Docket No. FWS-R4-ES-2018-0092, and at the Raleigh Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Summary of Changes From the Proposed Rule

This final rule incorporates several changes to our proposed rule (84 FR 23644; May 22, 2019) based on the comments we received. These changes are summarized in the document that reopened the proposed rule's public comment (85 FR 45839; July 30, 2020), as well as below under Summary of Comments and Recommendations. Minor, nonsubstantive changes and corrections are made throughout this rule in response to comments. Based on these comments, we also incorporate as appropriate new information into our SSA reports, including updated survey information. However, the information we received during the public comment period on the proposed rule did not change our determination that the

Carolina madtom is an endangered species and the Neuse River waterdog is a threatened species.

We received substantive comments on the proposed rule issued under section 4(d) of the Act ("4(d) rule") for the Neuse River waterdog and the critical habitat designations for both species. We have made changes to this rule as a result of the public comments we received. We modified the language in the Neuse River waterdog 4(d) rule for each exception for incidental take. In summary, we modified the exception for species restoration efforts by State wildlife agencies to include monitoring, which is necessary to determine the success of captive propagation and stocking efforts; for channel restoration projects to add language that would require surveys for and relocation of Neuse River waterdogs observed prior to commencement of restoration action; for bank stabilization projects to add a requirement that appropriate "native" vegetation, including woody and herbaceous species appropriate for the region and habitat, be used for stabilization; and for forestry-related actions to reflect alternative language provided by the North Carolina Forest Service (NCFS) (see (28) *Comment* under Summary of Comments and Recommendations, below). In terms of critical habitat, for the Carolina madtom, we updated ownership information for the Eno River critical habitat (Unit 4), we modified the occupancy determination from unoccupied to occupied for critical habitat Unit 6 (Contentnea Creek) based on new data for the species (see (8) *Comment* under Summary of Comments and Recommendations, below). For the Neuse River waterdog, we added two occupied critical habitat units (Unit 3—Bens Creek and Unit 18—Tuckahoe Swamp) and modified to add or remove areas to/from five units (Unit 1—Upper Tar River, Unit 4—Fishing Creek Subbasin, Unit 6—Middle Tar River Subbasin, Unit 10—Middle Creek, and Unit 17—Trent River) of the critical habitat designation, for a total of 779 miles, an increase of 41 miles from the proposed designation.

As indicated in the document that reopened the proposed rule's public comment (85 FR 45839; July 30, 2020), we have also changed the way in which the provisions of the 4(d) rule for the Neuse River waterdog will appear at 50 CFR 17.43(f). Specifically, we no longer set forth a blanket statement applying all prohibitions and provisions of 50 CFR 17.31 and 17.32 to the Neuse River waterdog. Instead, we set forth specific prohibitions and exceptions to those prohibitions in the 4(d) rule, but the

substance of the prohibitions and the exceptions to those prohibitions, as included in the May 22, 2019, proposed rule (84 FR 23644), has not changed.

Summary of Comments and Recommendations

In the proposed rule published on May 22, 2019 (84 FR 23644), and in the document published on July 30, 2020 (85 FR 45839) that reopened the comment period on the May 22, 2019, proposed rule, we requested that all interested parties submit written comments on the proposals. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposals. Newspaper notices inviting general public comment were published in the Raleigh News and Observer on June 3, 2019, and on August 9, 2020. We did not receive any requests for a public hearing. All substantive information provided during the comment periods has either been incorporated directly into the final determinations or is addressed below. For topics we received comments on during both comment periods (e.g., the forestry exception language in the 4(d) rule), we identify whether the comments were received as part of the initial comment period (May 22–July 22, 2019) or the reopened comment period (July 30–August 31, 2020).

Peer Reviewer Comments

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 peer review of the SSA reports. We sent the Carolina madtom SSA report to six independent peer reviewers and the Neuse River waterdog SSA to five independent peer reviewers; all peer reviewers had expertise that included familiarity with Carolina madtom or Neuse River waterdog and their habitats, biological needs, and threats. We received responses from four of the peer reviewers for the Carolina madtom and one of the peer reviewers for the Neuse River waterdog.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the information contained in the SSA reports. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the final SSA reports. Peer reviewer comments are addressed in the following summary

and were incorporated into the SSA reports as appropriate.

Carolina Madtom

(1) *Comment:* One peer reviewer mentioned that predation by flathead catfish is likely a dominant threat to the Carolina madtom but appears minimally considered as a habitat factor in the SSA report. The commenter suggested that in addition to physical habitat attributes, biotic factors may in many cases (including this case) be critically important. This important habitat influence could be emphasized more in the SSA report.

Our Response: Data on the distribution, abundance, or predation pressure on madtoms for flathead catfish in either the Neuse or Tar River basins are not available; therefore, we could not explicitly include flathead catfish as a metric. Section 4.4 of the SSA report describes the significant threat that flathead catfish pose to the Carolina madtom, as does the overall viability summary for the species.

(2) *Comment:* One peer reviewer suggested that we make a strong statement concerning the endemism of the Tar-Neuse ecosystem and what a unique crucible of evolution it has been, as manifested in several endemic species, including the Carolina madtom, Tar River spinymussel (*Parvaspina steinstansana*), pinewoods shiner (*Lythrurus matutinus*), Neuse River waterdog, and others. The uniqueness of the overall ecosystem cannot be overemphasized, and the mutual benefits derived from the listing of any of the endemic organisms has appeal.

Our Response: We note the endemism of the Carolina madtom to the Tar and Neuse river systems in chapter 3 of the SSA report. While listing and critical habitat designation under the Act only apply to the species under consideration, we acknowledge that protections derived from implementing the Act are beneficial to the overall habitat and other organisms that co-occur with the Carolina madtom. However, benefits that listing a species under the Act may have on the overall ecosystem is not a factor for consideration when determining whether a species warrants listing under the Act.

(3) *Comment:* One peer reviewer commented that the SSA report suggests that instream habitat, water flow, and invasive fish are the main factors influencing madtom populations, and it is unclear how any of these factors are attributable to Confined Animal Feeding Operations (CAFOs). There is no direct linkage provided in the SSA report.

Our Response: Multiple sections in the SSA report state that the main habitat elements that influence Carolina madtom condition are water quality (CAFOs are a part of this, as are National Pollutant Discharge Elimination System (NPDES) discharges, as they contribute to identified impaired streams), water quantity, connectivity (potentially affected by CAFOs located within floodplains), instream habitat (also affected by CAFOs when runoff overwhelms instream flows), and predation by flathead catfish. Section 4.2 of the SSA report details the effects of CAFOs on the habitats within the madtom's range (Service 2021a, pp. 35–36).

(4) *Comment:* One peer reviewer expressed disappointment that the Service did not reference materials provided via email in July 2016, stating that the SSA report has a slanted viewpoint, has cherry-picked negative impacts associated with forest management, and only focuses on those in the analysis.

Our Response: The material provided to us in July 2016 has been cited directly in the revised forestry section (section 4.3) of the SSA report (Service 2021a, pp. 36–40). We note that the very first sentence in this section of the SSA report states that a forested landscape provides ideal conditions for aquatic ecosystems. In the SSA report and in this final rule, we also note that silvicultural activities, when performed according to strict forest practices guidelines (FPGs) or best management practices (BMPs), can retain adequate conditions for aquatic ecosystems. However, we also note that, when FPGs/BMPs are not implemented or inadequate implementation occurs, these forestry activities can also “cause measurable impacts” (NCASI 2015, p. 1) and contribute to the myriad of stressors facing aquatic systems in the Southeast (Service 2021a, p. 37). In addition, we note that one major, albeit temporary, BMP failure, a harvest that is non-compliant with BMPs or FPGs, or failure to maintain a BMP, can cause enough sedimentation to smother nests and/or cause enough stress to have irreversible impacts to Carolina madtom populations.

(5) *Comment:* One peer reviewer recommended that the Service solicit a representative of the agriculture community to participate in the peer review of the SSA report. The peer reviewer noted that both the Neuse and Tar-Pamlico River basins have a substantial amount of agricultural operations and it may be beneficial for all parties to understand how that type

of land use may play a role in supporting future species conservation needs.

Our Response: We sought peer review from an agriculture expert in the North Carolina Department of Agriculture for the Neuse River waterdog SSA report (which has very similar analysis of agricultural operations as the Carolina madtom SSA report). However, we did not receive a response to our request.

Neuse River Waterdog

(6) *Comment:* One peer reviewer had questions about the occupancy metrics and whether detection probabilities were incorporated into the estimates of occupancy, as well as the time periods that the survey efforts represented in order to better understand the underlying analyses presented in the SSA report.

Our Response: We added detection probability information into the SSA report (Service 2021b, p. 19) and note that for the original analysis, site occupancy indicates a minimum, naïve occupancy (*i.e.*, detection probabilities were not incorporated into the initial estimates). We are currently working with North Carolina State University to perform an in-depth occupancy analysis for Neuse River waterdog; however, this analysis has not been completed, and the resulting information is not available for incorporation. We also note that the time periods and replicated methodologies for the survey efforts are also described in section 3.3.1 of the SSA report (Service 2021b, p. 19).

State Agency Comments

We received comments from three State agencies, the North Carolina Wildlife Resources Commission (NCWRC), the North Carolina Forest Service (NCFS), and the Virginia Department of Forestry (VDof). Because we received several comments from both NCFS and VDof and from the public regarding forestry considerations, we have integrated NCFS/VDof comments and responses under *Public Comments*, below.

Carolina Madtom

(7) *Comment:* The NCWRC provided a thorough review of the SSA report and included many comments updating data and interpretations. The partner review suggested that we revise the document to include the Trent River Subbasin within the greater Neuse River basin, based on the hydrologic unit categorization, to avoid confusion.

Our Response: Nearly all data revisions and interpretations were incorporated into the revised SSA report. In section 3.1 of the SSA report,

we describe why we separated the Trent River Subbasin: “Because of salt water influence, the habitats in the Trent River system are isolated from the Neuse River and its tributaries; therefore, we consider the Trent River system as a separate basin (*i.e.*, population), even though it is technically part of the larger Neuse River Basin” (Service 2021a, p. 9).

(8) *Comment*: The NCWRC provided a new record during the public comment period in 2019, of a Carolina madtom collected from Contentnea Creek near NC 42 in July 2018.

Our Response: While we included this reach in proposed critical habitat, the May 22, 2019, proposed rule (84 FR 23644) considered Contentnea Creek to be unoccupied, with the last known record from 2007. With this 2018 record, we consider the Contentnea Creek critical habitat unit to be occupied. Therefore, we have updated the designated critical habitat to reflect that Unit 6—Contentnea Creek is occupied for the Carolina madtom. We revised the critical habitat designation to address this comment in our July 30, 2020, document reopening the May 22, 2019, proposed rule’s public comment period (85 FR 45839).

Neuse River Waterdog

(9) *Comment*: The NCWRC provided a thorough review of the SSA report and included many comments updating data and interpretations. The partner review indicated concern about how current occupancy was summarized (*i.e.*, that the species currently occupies 73 percent of its historical range), indicating that the recent survey efforts suggest a 50 percent decline in occupied sites from the surveys done in the early 1980s.

Our Response: Data revisions and interpretations were incorporated into the revised SSA report. We note that current occupancy versus the occupancy of historical range at the species level is summarized by watershed (or hydrologic unit) occupancy within MUs rather than by individual site occupancy. This difference likely accounts for the apparent discrepancy noted by the commenter. The SSA report includes details about changes at the site level, as well as the overall watershed, to provide as complete a picture as possible of changes from historical times to the present day (Service 2021b, p. v).

(10) *Comment*: The NCWRC provided several new records for Neuse River waterdog during the public comment period in 2019, including records in Middle Creek (Johnston County), Tuckahoe Swamp (Jones County), Tar

River (Granville County), and Fishing Creek (Nash County).

Our Response: We included these new records and updated five critical habitat units (Unit 1—Upper Tar River, Unit 4—Fishing Creek Subbasin, Unit 6—Middle Tar River Subbasin, Unit 10—Middle Creek, and Unit 17—Trent River). We revised Unit 1 to add 3.7 miles (6 km) of the Upper Tar River based on a 2018 observation provided by NCWRC of Neuse River waterdog. We revised Unit 4 to add 20 miles (32.3 km) of Fishing Creek based on a 2019 observation provided by NCWRC of Neuse River waterdog. We revised Unit 6 to add 11 miles (17.8 km) of the upper reach of the Tar River based on a 2019 observation by a permitted private consultant of Neuse River waterdog. We revised Unit 10 to add 23.2 miles (37.4 km) of Middle Creek based on two 2018 observations provided by NCWRC of Neuse River waterdog. These revisions were part of our July 30, 2020, document reopening the May 22, 2019, proposed rule’s public comment period (85 FR 45839).

Public Comments

During the initial comment period, we received 83 public comments on the proposed rule, and during the reopened comment period, we received 16 public comments. A majority of the comments supported the listing determinations and critical habitat designations, none opposed the designations, and some included suggestions on how we could refine or improve the 4(d) rule for the Neuse River waterdog and the critical habitat designations for both species. All substantive information provided to us during the comment periods has been incorporated directly into this final rule or is addressed below. For topics for which we received comments during both comment periods (*e.g.*, the forestry exception language in the 4(d) rule), we identify whether the comments were received during the initial comment period (May 22–July 22, 2019) or the reopened comment period (July 30–August 31, 2020).

(11) *Comment*: One commenter indicated that the Service should consider forestry BMPs as part of the overall conservation benefit for the species, and account for these beneficial actions in any threat analysis.

Our Response: Forested watersheds contribute to the current condition of each species and have been factored in as a positive factor (*i.e.*, benefit) under the “Connectivity” habitat element as described in chapter 3 of each species’ SSA report. We also note that forestry activities were not carried forward as a primary threat for our future condition

analyses because the future condition analyses focused on the main threats (urbanization and climate change) that are predicted to affect the species’ future condition.

(12) *Comment*: One commenter stated that the proposed rule does not present evidence that forest management is contributing elevated levels of sediment to streams occupied by the Neuse River waterdog and Carolina madtom.

Our Response: Sediment is one of the most frequently cited water quality concerns associated with forestry operations and is one of the top causes of river and stream impairment in the United States (EPA 2017, p. 3). Sedimentation is one of the primary stressors to aquatic fauna, including the Neuse River waterdog and Carolina madtom (Service 2021ab, chapter 4). Forestry practices can alter the natural sediment balance and lead to increased rates of sediment input, resulting in increased concentrations of sediment in the water body and increased deposition of sediment on the stream bottom. The forest industry recognizes that harvest and management practices cause sedimentation, which is why they have BMPs, or practices that are used to minimize water pollution from sedimentation. BMP implementation rates are generally high, and in the Neuse and Tar-Pamlico River basins, overall BMP implementation rates are approximately 88 to 90 percent (Coats 2017, p. 38). While we do not know the exact location of all forestry operations in the Neuse and Tar-Pamlico River basins (see maps from North Carolina Forest Service (NCFS) 2018, p. 43), lack of BMP implementation was approximately 10 to 12 percent for sites assessed in those watersheds from 2012–2016; identified risks to water quality were most often attributed to improper BMPs for Streamside Management Zones (SMZs) and stream crossings (Coats 2017, pp. 8–9), which likely contributed sedimentation to habitats in the systems that the waterdog and madtom occupy.

(13) *Comment*: To provide additional information about compliance, one commenter described the process for when a “significant risk to water quality” is observed during BMP implementation inspections. They indicated that the presence of a significant risk triggers further investigation by State agency inspectors that leads to collaborative efforts among State agencies, the forest landowner, logger, and/or contractor to perform corrective measures to remedy the issue. After a reasonable period of time, a follow-up site evaluation is made to assess compliance with the

recommended measures. Willful noncompliance with State agency recommendations typically results in a referral to the appropriate regulatory agency for enforcement action.

Our Response: We acknowledge the protocols in place to remedy water quality violations. We recommend that the Service be included in the agencies notified if water quality violations occur to habitats occupied by the Neuse River waterdog or Carolina madtom.

(14) *Comment:* During the initial comment period, one commenter noted that within the range of the Neuse River waterdog and Carolina madtom, North Carolina BMPs require a minimum SMZ width of 50 feet on each side of the stream, and referenced chapter 4 (SMZs and Riparian Buffers) of the NCFS's BMP manual.

Our Response: Our review of the NCFS's BMP Manual indicates that 50-foot buffers are part of the Tar-Pamlico and Neuse riparian buffer rules; however, recent correspondence with the NCFS clarifies that forest harvesting is allowed in all zones of the 50-foot buffer (see chapter 02 of title 15A of the North Carolina Administrative Code (NCAC) at section 02B .0612 (15A NCAC 02B .0612); NCFS 2020, p.1).

(15) *Comment:* One commenter noted that the Federal Highway Administration (FHWA) has not consulted with the Service regarding the Carolina madtom or Neuse River waterdog, or analyzed impacts to the species before pursuing construction of the project in Wake/Johnston Counties.

Our Response: While this comment is outside the scope of this rulemaking, the FHWA/North Carolina Department of Transportation (NCDOT) re-initiated section 7 consultation/conference with a revised biological assessment for the Complete 540 project dated July 2019. The Service issued a revised biological opinion (BO) for the Complete 540 project on October 15, 2019. This BO primarily concerned the dwarf wedgemussel (*Alasmidonta heterodon*), yellow lance (*Elliptio lanceolata*), Atlantic pigtoe (*Fusconaia masoni*), and proposed critical habitat for the Atlantic pigtoe. However, we also concurred that the project may affect, but is not likely to adversely affect, the Neuse River waterdog. This conclusion was based primarily on the fact that repeated surveys never found the species anywhere near the action area, and the closest record was 5 to 6 miles downstream in Swift Creek. FHWA/NCDOT determined the project would have no effect on the Carolina madtom since the species is not currently considered present in or near the action area. Therefore, there was no

consultation/conference for the Carolina madtom.

(16) *Comment:* When the Service proposes critical habitat for these species, it should take into consideration the economic benefits of protecting habitat for the species, including ecosystem services, the protection of clean water, the reduced cost of water treatment for drinking water supplies, and public health benefits.

Our Response: As noted in the draft economic analysis (DEA), the primary intended benefit of critical habitat is to support the conservation of endangered and threatened species, such as the Carolina madtom and Neuse River waterdog. In order to quantify and monetize direct benefits of the designation, information would be needed to determine both the incremental change in the probability of madtom or waterdog conservation expected to result from the critical habitat designation and the public's willingness to pay for such beneficial changes. The conclusion was that additional project modifications to avoid adverse modification of critical habitat for either the Carolina madtom or Neuse River waterdog are not anticipated. Analysis of ecosystem services, such as clean water, or broad benefits of ecosystem services to human populations that may result from critical habitat designations are generally outside the scope of economic considerations for the designation of Carolina madtom and Neuse River waterdog critical habitat, primarily because the uncertainties associated with monetary quantification of these benefits are large.

(17) *Comment:* One commenter suggested that the Service consider the protection of these species to be an environmental justice issue. The commenter provided the U.S. Environmental Protection Agency (EPA) definitions of "environmental justice" (*i.e.*, the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies), "fair treatment" (*i.e.*, no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies), and "meaningful involvement" (*i.e.*, people have an opportunity to participate in decisions about activities that may affect their environment and/or health; the public's contribution can influence the regulatory agency's decision; their

concerns will be considered in the decision making process; and the decision makers seek out and facilitate the involvement of those potentially affected). The commenter further stated that protecting these species and their habitats is an environmental justice imperative, and would have positive benefits for public health and well-being in the Coastal Plain of North Carolina and beyond.

Our Response: For listing actions, the Act requires that we make determinations "solely" on the basis of the best available scientific and commercial data available (16 U.S.C. 1533(b)(1)(A)). Still, we recognize the indirect benefits, including the aesthetic, recreational, and overall health benefits of listing species and designating critical habitat, that this rule may provide for all human communities surrounding and including the habitats that both species occupy.

Neuse River Waterdog

(18) *Comment:* One commenter stated that the Neuse River waterdog should be listed as endangered because of the threat of climate change.

Our Response: As described below in *Neuse River Waterdog: Status Throughout All of Its Range* and in *Neuse River Waterdog: Status Throughout a Significant Portion of Its Range*, we considered whether the Neuse River waterdog is presently in danger of extinction throughout all or a significant portion of its range and determined that endangered status is not appropriate for the species' entire range or for a portion of its range. The current conditions as assessed in the Neuse River waterdog SSA report show that the species exists in nine MUs over three different populations (river systems) over a majority (65 percent) of the species' historical range. The Neuse River waterdog still exhibits representation across both physiographic regions, and extant populations remain across the range. In short, while the primary threats are currently acting on the species and many of those threats are expected to continue into the future, we did not find that the species is currently in danger of extinction throughout all or a significant portion of its range.

(19) *Comment:* Several commenters indicated that they support the listing of the Neuse River waterdog (and Carolina madtom), as well as the designation of critical habitat to protect and recover both species. However, while they supported the listing and designation of critical habitat, they opposed the 4(d) rule, stating that it would severely limit the effectiveness of other conservation

measures and reduce the likelihood of survival and recovery. One commenter mentioned that the proposed exceptions in the 4(d) rule concerning silviculture practices are an inappropriate and unlawful use of a 4(d) rule and that the Service's proposal to provide for the conservation needs of these sensitive aquatic species via "BMPs" and Sustainable Forestry Initiative/Forest Stewardship Council/American Tree Farm System certification standards is not a serious one. The commenters indicated that the proposed 4(d) rule fails to set forth a protective regulation that provides for the specific conservation needs of the Carolina madtom and Neuse River waterdog.

Our Response: Section 4(d) of the Act states that the Secretary shall issue such regulations as he or she deems necessary and advisable to provide for the conservation of species listed as threatened. Section 4(d) of the Act provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. As described below under II. Final Rule Issued Under Section 4(d) of the Act for the Neuse River Waterdog, the provisions of our 4(d) rule will promote conservation of the Neuse River waterdog by encouraging management of the landscape in ways that meet both land management considerations and the conservation needs of the Neuse River waterdog. The prohibitions and exceptions to the prohibitions identified in the 4(d) rule are considered necessary and advisable for the conservation of the Neuse River waterdog.

Development and refinement of forest management BMPs has resulted in substantial improvements to forestry's impacts on water quality in recent decades, and the reduced risks of these practices to water quality justify the Service's inclusion of a 4(d) exception for forestry for the Neuse River waterdog. North Carolina Forestry BMPs, properly implemented, protect water quality and help conserve aquatic species, including the Neuse River waterdog.

The Service has determined that the Carolina madtom meets the definition of an endangered species, and the Act does not allow issuance of a 4(d) rule for a species listed as endangered.

(20) *Comment:* Several comments we received during the reopened comment period (July 30–August 31, 2020), including from the NCFS, indicated the Service did not explain or justify the necessity for a two-zoned SMZ. SMZs wider than those already recommended by State forestry BMPs within the

geographic range of Neuse River waterdog, or the application of SMZs related to Virginia and North Carolina trout waters to waters where the Neuse River waterdog occurs. Some comments further suggested that references to trout rules or BMPs beyond those already required within the range of Neuse River waterdog would be confusing and challenging to implement. Several such comments further questioned any additional conservation benefits that SMZs wider than those currently recommended in State BMPs would provide.

Our Response: It was the Service's intent to provide additional discussion and explanation for the exception under 4(d) resulting from incidental take from certain forestry practices, based on comments received on the May 22, 2019, proposed rule (84 FR 23644). During that comment period, we received several comments stating that the proposed 4(d) rule language, referring to "highest standard BMPs" was too vague or confusing. By referring to BMPs related to trout waters (specifically SMZs), it was the Service's intent to use a frame of reference that would be familiar to forest landowners and managers for species sensitive to sedimentation and thermal effects on stream waters to better explain how the exception would apply, but not to apply those particular parameters. Comments that mentioned trout rules seemed to be referring to the preamble language, rather than the regulation text. The proposed regulation text outlined BMPs, but did not include references to trout. However, we understand that the references to trout waters in the preamble has caused confusion for multiple reasons, in part because the Neuse River waterdog occurs in a region different from trout, and it was not clearly stated how the Neuse River waterdog is similarly sensitive to sedimentation (a primary factor responsible for the derivation of BMPs specific to trout waters). There was also confusion as a result of multiple other regulations and recommended practices that already exist in the Neuse and Tar watersheds where the species occurs (*i.e.*, riparian buffer rules and North Carolina's FPGs) and for which the NCFS maintains a BMP manual with recommended practices for meeting compliance with FPGs. The concerns of the commenters have been carefully considered and addressed by revising the 4(d) rule to specify the habitat management goals necessary to provide for the breeding, feeding, and sheltering needs of the Neuse River waterdog, rather than prescribing a particular

management practice with which to achieve necessary habitat protection (*e.g.*, we removed the two-zoned SMZs of variable width; see II. Final Rule Issued Under Section 4(d) of the Act for the Neuse River Waterdog, below, for revisions).

(21) *Comment:* A couple of commenters stated that SMZs are part of a suite of BMPs and that they should not be proposed alone, indicating that we should include mention of all BMPs in the exception for incidental take.

Our Response: We agree with this comment and note that the Service proposed the exception under section 4(d) for incidental take from certain forestry practices to include multiple State-approved BMPs, highlighting considerations for SMZs because of their importance to stream habitat, along with considerations for stream crossings, skid trails, and access roads. However, during both comment periods, commenters have demonstrated particular concern over that portion of the proposed exception on forestry SMZs. As noted in the previous response, we have revised this exception for incidental take under section 4(d) by removing the requirement of a two-zoned SMZ; the revision now includes exceptions for take associated with practices following forestry BMPs so that it will not add confusion and will be more practical to implement along with existing FPGs and State-recommended BMPs, while also promoting conservation of Neuse River waterdog and its habitat.

(22) *Comment:* We received many comments stating that State-approved BMPs are sufficient for the protection of the Neuse River waterdog because BMP implementation rates are high. They indicate that because BMP implementation rates are high, we should provide an exception for incidental take for all State-approved BMPs.

Our Response: We agree that when used and properly implemented, BMPs can offer a substantial improvement to water quality compared to forestry operations where BMPs are not properly implemented; it is for this reason that the Service has included an exception for incidental take for forest management that adheres to BMPs in the 4(d) rule for the Neuse River waterdog. The commenters provided information that indicates rates of forestry BMP implementation across the Southeast, and the nation, are generally high. We agree but assert that forest management is not risk-free for wildlife or water quality. Some studies focused on the effects of silvicultural activities on aquatic salamanders have found that

logging-related sedimentation can reduce larval and adult abundance (Lowe et al. 2004, p. 167; Moseley et al. 2008, pp. 303–305), or have synergistic impacts on populations when combined with other stressors (e.g., predatory fishes; Lowe et al. 2004, pp. 167–170), and that wide (~100 ft (30 m)) riparian buffers are needed to offer similar protection as unharvested sites, while narrow (~30 ft (9 m)) buffers had similar effects on salamanders as no buffer at all (Peterman & Semlitch 2009, pp. 10–13). The most recent survey of BMP implementation in North Carolina showed that implementation rates—while averaging 84 percent Statewide and averaging 88–90 percent in the Neuse and Tar-Pamlico River basins—did vary among regions within the State, and they varied with respect to the type of BMP being evaluated (Coats 2017, pp. 8–41). The NCFS reported that BMPs were not applied or properly implemented in 4,584 opportunities in their assessments, and that 30 percent of these cases posed a risk to water quality (Coats 2017, p. 8). The NCFS also reported that 74 percent of all identified risks to water quality were associated with the lack of application or improper implementation of BMPs related to stream crossings (average implementation rate = 79 percent; range 72–83 percent), SMZs (average implementation rate = 86 percent; range 72–91 percent), and post-harvest rehabilitation of a site (average implementation rate = 71 percent; range 53–83 percent) (Coats 2017, pp. 8, 9, 18–19, 26–34). Such incidents of improperly implemented or unused BMPs and their associated risks to water quality and habitat are important to acknowledge in the context of rare, imperiled species, where any one particular localized event may result in further imperilment of a population and set back recovery of the species. Accordingly, we cannot assume that BMPs will unequivocally be implemented.

Development and refinement of BMPs has resulted in substantial improvements to forestry's impacts on water quality in recent decades and has created a culture of water stewardship in the forest landowner community, making this stakeholder group an important ally in the conservation of imperiled species. The reduced risks to water quality justify the Service's inclusion of an exception for incidental take associated with forestry BMPs in the 4(d) rule for the Neuse River waterdog, and the remaining presence of risk supports the need to specify conditions required for the exception to

apply. Incidental take associated with forest management activities in the range of Neuse River waterdog that do not meet the conditions of the exception in the 4(d) rule may still occur via consultation with the Service under section 7, or a conservation agreement under section 10, of the Act.

Because BMPs in North Carolina are voluntary, existing BMPs will be sufficient for the protection of the Neuse River waterdog if, and only if, they are widely implemented in watersheds where the species occurs and are implemented appropriately such that all forest management operations maintain compliance with North Carolina's FPGs and achieve management goals related to conserving and maintaining suitable habitat for the Neuse River waterdog (which closely mirror the FPG requirements). North Carolina Forestry BMPs, properly implemented, protect water quality and help conserve aquatic species, including the Neuse River waterdog. Forest landowners who properly implement those BMPs are helping conserve the waterdog, and this 4(d) rule is an incentive for all landowners to properly implement BMPs to avoid any take implications. Further, those forest landowners who are third-party-certified to a credible forest management standard are providing audited certainty that BMP implementation is taking place across the landscape; thus, the exception for incidental take in the 4(d) rule will apply to their forestry activities.

(23) Comment: Some of the comments about BMPs being sufficient (see *(24) Comment*, above) further suggested that assessments of water quality using aquatic insects as indicators confirm that BMPs are protective of water quality and habitat for aquatic species. Therefore, BMPs are sufficient for protecting Neuse River waterdogs as well.

Our Response: Much of the literature shared by commenters on the effectiveness of BMPs for protecting aquatic species and their habitats relies on aquatic macroinvertebrate assessments, mostly of aquatic insects. While they are a common rapid field assessment method for monitoring or measuring water quality, current scientific information does not support the assumption made by several commenters that presence or recovery of insects is a proxy for suitable habitat recovery after disturbance (i.e., a sedimentation event) for aquatic salamanders like the Neuse River Waterdog, or a proxy for recolonization of waterdogs after such a disturbance. While reliance on effects to aquatic insect communities is a useful rapid

assessment tool for water quality, there is a gap in the best available science about how that resilience relates to comparatively long-lived vertebrates, such as salamanders (e.g., Neuse River waterdog). Some research comparing how macroinvertebrate assessments relate to those of other taxa (e.g., amphibians, fishes, or zooplankton) indicates that they do not correspond well in evaluations of watershed land use or anthropogenic effects on water quality and water resources (e.g., Brazner et al. 2007, pp. 625–627; Kovalenko et al. 2019, entire; Herlihy et al. 2020, entire). Further, some studies recommend using assessments from multiple taxa to better evaluate the response of biological integrity in streams to anthropogenic activities (Herlihy et al. 2020, p. 10; Hughes et al. 2000, pp. 437–440). Since aquatic amphibians are long-lived and exhibit a high degree of site fidelity, these taxa may be a more reliable indicator of stream condition than macroinvertebrates or fishes (Welsh and Ollivier 1998, pp. 1128–1129). The risks of water quality impacts to many taxa highlighted the utility of aquatic insect assessments for evaluating forestry BMPs, along with the need for research on forestry BMP effectiveness for the protection of taxa other than aquatic insects (Warrington et al. 2017, entire).

Most aquatic insects are not considered rare species, and immigration by aquatic insects back into an affected stream reach may be facilitated by downstream drift or other mechanisms, including the adult winged flight stage, which allows immigration from other nearby waterbodies or from downstream reaches. The Neuse River waterdog is a rare, obligate aquatic salamander with different ecological requirements and a decades-long lifespan, compared to the shorter lifespan and aquatic larval phase of macroinvertebrate insects typically emphasized in assessments (e.g., aquatic phases ranging less than 1 to 2 years for many mayflies (Ephemeroptera; Voshell 2002, p. 270); 1 to 2 years for many stoneflies (Plecoptera; Voshell 2002, p. 310); less than 1 to 2 years for most caddisflies (Trichoptera; Voshell 2002, p. 375)). Extirpation of the Neuse River waterdog from a stream reach after an impact to the population (e.g., a sedimentation event that kills eggs or renders leaf packs unsuitable as foraging habitat) would have lasting consequences, and recolonization can be hampered by factors that are less problematic for non-rare aquatic insect species, such as instream barriers to migration, distance to the next

population, permanent or long-term alteration of streambed habitat that reduces its suitability for supporting the species (e.g., filling of habitat crevices used for nesting and home range retreats with fine sediments), and a much longer generation time than most insects (approximately 6 years; Service 2021b, p.7).

(24) *Comment:* Some commenters stated that the Service did not provide evidence that the Neuse River waterdog is a sensitive species, and at least one commenter stated that failure to describe its sensitivity or similarity to trout sensitivity is arbitrary and capricious.

Our Response: As discussed above, the Act requires that we make determinations solely on the basis of the best available scientific and commercial data available (16 U.S.C. 1533(b)(1)(A)). In making these determinations, we consider the ecological requirements of the species and how they are affected by the various factors. We included several details related to the ecological requirements of the Neuse River waterdog (e.g., flow, dissolved oxygen), referenced the SSA report, and included a summary of risk factors to the species in the proposed rule published on May 22, 2019 (84 FR 23644). We further provided information in the document published on July 30, 2020 (85 FR 45839), including statements on the effects of sedimentation (e.g., “Highly turbid, silted stream water can clog the external gills of waterdogs, and can also decrease the stream’s insect population, an important source of food (Service 2021b, p. 8)” (85 FR 45839, July 30, 2020, p. 85 FR 45843)). The commenters may not have realized that the July 30, 2020, document presenting revisions to the proposed rule was not a complete reproposal; it presented only the substantive proposed revisions to the May 22, 2019, proposed rule. However, the concerns of the commenters have been carefully considered and addressed by removing references to trout and revising the final rule and SSA report to include more detailed information about the Neuse River waterdog, its habitat requirements, and sensitivity to threats, particularly sedimentation, using the best available scientific information about this species and relevant information from related species (i.e., gilled, aquatic salamanders). These revisions provide evidence and justification that the Neuse River waterdog is a sensitive species in need of protection from risk factors that threaten survival, persistence, and habitat.

(25) *Comment:* A few commenters highlighted proposed or final rules for

other aquatic species that they say indicate a Service precedent for accepting State-approved forestry BMPs as sufficient for protection of a species (i.e., they appear as an exception to the take prohibition) in a 4(d) rule. They indicated this precedent should apply to the 4(d) rule for Neuse River waterdog. Two related comments expressed concern that this rule would set a precedent not founded in the best available scientific information, if finalized with forest management requirements in the 4(d) exceptions that exceed State-recommended BMPs for the areas in which the Neuse River waterdog occurs.

Our Response: First, 4(d) rules for threatened species are intended to establish species-specific regulations to provide for the conservation of a threatened species, and may incentivize beneficial actions for the species and reduce the regulatory burden on forms of take that are compatible with the conservation of the species. The 4(d) rules provide protection necessary and advisable to conserve the Neuse River waterdog by outlining prohibitions for the protection of the species, and if appropriate, any exceptions from the prohibitions. The species-specific nature of the rules indicates they do not set a precedent for other species. It may be practical to consider implications of how 4(d) rules are implemented for species that have overlapping geographic ranges and habitat needs, but we do not agree with the premise that any 4(d) rule sets a precedent for another species. Second, several of the comments referenced language that was not provided in the context of discussions for threatened species and a 4(d) rule and is irrelevant in this context. For example, commenters referenced language that refers to Alabama’s forestry BMPs in the Summary of Factors Affecting the Species discussion in the final rule listing the Black Warrior waterdog (*Necturus alabamensis*) as endangered (83 FR 257, January 3, 2018, see p. 83 FR 263). Other comments we received referred to language for critical habitat designation—not for species listing and 4(d) rules—that listed BMPs among activities that can ameliorate threats to critical habitat. Comments also referenced the pearl darter (*Percina aurora*), a species listed as threatened in 2017 when the blanket 4(d) rule applied, extending all endangered species protections to threatened species; that listing rule (82 FR 43885; September 20, 2017) included silviculture with BMPs among actions unlikely to result in a violation of the

Act’s section 9, and it also listed poor silviculture among the factors affecting the species. Finally, some comments referenced the trispot darter (*Etheostoma trisella*), which is a threatened species with a species-specific 4(d) rule that includes an exception to the incidental take prohibitions for take associated with silviculture. The final 4(d) rule for the trispot darter (85 FR 61614; September 30, 2020) includes an exception for incidental take resulting from silviculture practices and forest management activities. Conditions of this exception include requirements for implementing State BMPs for SMZs, stream crossings, and forest roads, among others; removal of logging debris from channels; and a temporal window that only allows for the exception outside of that species’ spawning season (i.e., the exception only applies for a portion of the year). Although the trispot darter final 4(d) rule is the most relevant among the commenters’ examples (i.e., a threatened species with a 4(d) rule exception for silviculture), the Service is required to make the listing determination for the Neuse River waterdog based on the best available science and develop a species-specific 4(d) rule based on what is necessary and advisable to provide for the conservation of this particular species. The Service’s offices operate within discrete geographic regions, in part, to facilitate partnerships with State and other Federal agencies, Tribal communities, industry, and other nongovernmental organizations in their work area; through these partnerships, we are well poised to consider existing local environmental rules, local environmental conditions, and other factors, and to tailor the management needs of species. Prohibitions and exceptions for a threatened species outlined in its 4(d) rule are specific to the considerations for that particular species.

The species-specific nature of 4(d) rules is inherently resistant to precedent setting, because the Service must consider the needs of the species being listed as threatened and issue regulations deemed necessary and advisable to provide for the conservation of that species. The proposed 4(d) rule for the Neuse River waterdog did not prescribe management restrictions; rather, it outlined prohibitions (e.g., take) to ensure the species and its habitat are not adversely affected, and exceptions to those prohibitions for incidental take resulting from activities that are not expected to adversely affect the species, and may

provide conservation benefits. The 4(d) exceptions provide specific information on the conditions required for being excepted from incidental take; they do not prohibit other forms of silvicultural management. Those activities not falling within the stated exceptions simply would require consultation with the Service under section 7, or a conservation agreement under section 10, of the Act. The 4(d) rule's exceptions, including the conditions necessary to meet those exceptions, are intended to provide some relief from regulatory burden, while avoiding adverse impacts to the species and adverse modification of the species' habitat.

(26) Comment: Several commenters requested that the Service revise the proposed 4(d) rule to remove language referring to BMPs we find necessary for the conservation of the Neuse River waterdog and to only reference State-approved BMPs without addition or modification.

Our Response: The Service's regulations typically do not refer to non-Federal rules, regulations, or guidance because doing so would result in an "incorporation by reference," which means that the referenced non-Federal document would be considered a de facto Federal regulation, and each time that non-Federal document is updated or revised, we would have to go through rulemaking to update our regulations. Regulatory references are typically restricted to existing conservation regulatory requirements for species under another Federal statute or international agreement (e.g., Marine Mammal Protection Act (MMPA); 16 U.S.C. 1361 *et seq.*); Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES; 27 U.S.T. 1087)). State-approved BMPs for forestry are not species conservation regulatory requirements. Furthermore, the North Carolina Forestry BMP manual does not represent a law or requirement; it is a set of recommended practices for achieving compliance with North Carolina's FPGs, and the manual is subject to change. In fact, the NCFS has recently proposed revisions to the BMP manual (Gerow 2020, pers. comm.); this highlights the need to provide specific information for the conservation of a species in the text of the regulation. The Act guides the Service to establish a species-specific 4(d) rule for threatened species, including language stating the prohibitions and potential exceptions for the protection of the species.

(27) Comment: During the reopened comment period (July 30–August 31, 2020), several commenters submitted

form letters using identical language stating that compliance with North Carolina's BMPs should be sufficient to protect a landowner from prosecution for an illegal take of the Neuse River waterdog.

Our Response: Illegal take of a species under protection of the Act is always prohibited. Take is only allowed by individuals who have appropriate permits or whose activities are covered by exceptions for incidental take; 50 CFR 17.3 defines "incidental taking" as any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. The 4(d) rule for the Neuse River waterdog applies all of the Act's section 9 take prohibitions, with certain exceptions from those prohibitions, including incidental take associated with four activity categories (species recovery by State agencies, channel restoration projects, bank stabilization projects, and silvicultural practices and forest management activities). To meet the 4(d) rule exception, maximum and proper implementation of State-approved BMPs is required and will ensure the excepted activity will avoid any take implications. However, we emphasize that illegal take (*i.e.*, activities not covered by an exception or by consultation with the Service) is prohibited.

(28) Comment: During the reopened comment period (July 30–August 31, 2020), two commenters, including the NCFS and VDOF, offered alternative language for the entirety of the silvicultural component of the proposed 4(d) rule. They noted that this alternative language was drafted with the intent of applicability in targeted watersheds of the eastern Piedmont and Upper Coastal Plain regions of North Carolina. The alternative language states an exception to the take prohibitions for: Forestry-related activities, including silvicultural practices, forest management work, and fire control tactics, that achieve all of the following: (1) Establish a streamside management zone alongside the margins of each occupied waterway; (2) restrain visible sedimentation caused by the forestry-related activity from entering the occupied waterway; (3) maintain groundcover within the streamside management zone of the occupied waterway, and promptly re-establish groundcover if disturbed; (4) limit installation of new vehicle or equipment crossings of the occupied waterway to only where necessary for the forestry-related activity. Such crossings must have erosion and sedimentation control measures installed to divert surface

runoff away and restrain visible sediment from entering the waterway, allow for movement of aquatic organisms within the waterway, and have groundcover applied and maintained through completion of the forestry-related activity; (5) prohibit the use of tracked or wheeled vehicles for reforestation site preparation within the streamside management zone of the occupied waterway; (6) prohibit locating log decks, skid trails, new roads, and portable mill sites in the streamside management zone of the occupied waterway; (7) prohibit obstruction and impediment of the flow of water, caused by direct deposition of debris or soil by the forestry-related activity, within the occupied waterway; (8) maintain shade over the occupied waterway similar to that observed prior to the forestry-related activity; and (9) prohibit discharge of any solid waste, petroleum, pesticide, fertilizer, or other chemical into the occupied waterway.

Our Response: The Service agrees with the comment and has revised the 4(d) rule language to reflect these suggested changes for the forestry exception. We recognize forestry management that implements State-approved BMPs protects water quality, and we realize that, in order to meet specific goals, flexibility is needed with regard to which BMPs are used during management. This final 4(d) rule provides practitioners the flexibility to choose which BMPs to use in their forestry activities while providing for the conservation of the species. We emphasize here that we deemed those revisions necessary because of concerns about confusion and challenging implementation related to multiple sets of forestry-related rules and guidelines already in place within the geographic region of Neuse River waterdog. As revised, this exception to incidental take prohibition, when properly implemented, will promote forestry management activities while also providing for the conservation the Neuse River waterdog.

(29) Comment: One commenter recommended that the Service remove references to silviculture being a potential source of pollution in the description of critical habitat units, indicating that the forestry sector in general believes that, although statements about silvicultural runoff as a source of pollution may have had some credence a generation or more ago, the advent of BMPs, their proven effectiveness, and their high implementation rates call for the elimination of these statements, and those similar to it, in a modern 4(d) rule.

Our Response: The Service acknowledges that there are multiple sources of sedimentation and other pollutants; we have removed the statements about silvicultural runoff as a source of pollution and replaced it with language about management activities that will benefit habitat for the species in the description of critical habitat units. In addition, we agree that the best available science indicates that proper implementation of forestry BMPs reduces negative effects on water quality outcomes compared to historical silvicultural practices or those that do not apply or properly implement BMPs. Although BMPs generally are implemented at high rates, they are not universally applied or always properly implemented, and forest management activities can still contribute to sediment pollution in a watershed. As noted in our response to (22) *Comment*, above, the most recent assessment of BMP implementation by the NCFS reported that the majority of risks to water quality identified during the assessment were associated with forest managers' failure to use or properly apply BMPs related to SMZs, stream crossings, and post-harvest restoration (Coats 2017, pp. 8–34). Moreover, as noted in our response to (23) *Comment*, above, metrics for BMP effectiveness are often associated with responses of macroinvertebrate insects; while such metrics are useful, there is no evidence to support that insect metrics capture the responses of benthic vertebrates, such as the Neuse River waterdog, to the effects of sedimentation on their habitat. One study examining the effects of silvicultural practices on salamanders reported that larval salamander abundance was negatively associated with stream embeddedness, as a result of sedimentation, at the reach scale, and overall, larval salamander abundance decreased with increasing harvested timber volume and increased with time after harvests (Moseley et al. 2008, pp. 303–305).

I. Final Listing Determinations

Background

Carolina Madtom

A thorough review of the taxonomy, life history, and ecology of the Carolina madtom is presented in the SSA report (Service 2021a, pp. 5–8).

The Carolina madtom (*Noturus furiosus*) is a moderate-sized catfish with a short, chunky body and a distinct color pattern of three dark saddles and a wide black stripe along its side. *Furiosus* means “mad” or “raging,” as the Carolina madtom is the most strongly armed of the North American

catfishes with stinging spines containing a potent poison in their pectoral fins. They are found in medium to large flowing streams of moderate gradient in both the Piedmont and Coastal Plain physiographic regions in the Neuse and Tar River basins. Suitable instream habitats are described as riffles, runs, and pools with current, and during the warm months the madtoms are found in or near swift current at depths of 1.0 to 3.0 feet (0.3 to 0.9 meters). Stream bottom substrate composition is important for benthic Carolina madtoms; leaf litter, sand, gravel, and small cobble are all common substrates associated with the species, although it is most often found over sand mixed with pea-sized gravel and leaf litter. During the breeding season, Carolina madtoms shift to areas of moderate to slow flow with abundant cover used for nesting.

The nesting season extends from about mid-May to late July. Nest sites are often found under or in relic freshwater mussel shells, under large pieces of water-logged tree bark, or in discarded beverage bottles and cans partially buried on the stream bottom. The female produces about 80 to 300 eggs, and the male guards the nest until the eggs hatch. Clutch sizes average 152 larvae, and life expectancy for these fish is at least 4 years.

The Carolina madtom is a bottom-dwelling insectivore that feeds primarily during the night, with peaks at dawn and dusk. More than 95 percent of the food organisms in the Carolina madtom stomachs were larval midges, mayflies, caddisflies, dragonflies, and beetle larvae (Burr et al. 1989, p. 78).

Neuse River Waterdog

A thorough review of the taxonomy, life history, and ecology of the Neuse River waterdog is presented in the SSA report (Service 2021b, pp. 5–10).

The Neuse River waterdog (*Necturus lewisi*) is a permanently aquatic salamander species endemic to the Neuse and Tar-Pamlico River drainages in North Carolina. The species occurs in riffles, runs, and pools in medium to large streams and rivers with moderate gradient in both the Piedmont and Coastal Plain physiographic regions. Neuse River waterdogs are from an ancient lineage of permanently aquatic salamanders in the genus *Necturus*, and one of three species of *Necturus* in North Carolina. Similar to the endangered Black Warrior waterdog (*Necturus alabamensis*) and several other permanently aquatic salamanders with similar life history and ecology, stream bottom substrate composition is also important for Neuse River

waterdogs: Gravel, cobble, or coarse sand substrates, with ample cover, that are free of fine sediments are commonly associated with the species.

Neuse River waterdogs have a reddish-brown skin with black spots, reaching up to 9 inches (in) in length as adults. Their underside is brownish-grey, and they have external bushy dark red gills. They eat large aquatic arthropods, aquatic and terrestrial invertebrates, and even some vertebrates like small fish. Like most waterdogs, they are opportunistic feeders who lie in wait for a small organism to swim or float by. All prey are ingested whole, and larger items are sometimes regurgitated and then re-swallowed.

Neuse River waterdogs are found in streams ranging from larger headwater streams in the Piedmont to coastal streams up to the point of saltwater intrusion. None have been found in lakes or ponds. They are usually found in streams wider than 15 meters (m), deeper than 100 centimeters (cm), and with a main channel flow rate greater than 10 cm per second. Further, they need clean, flowing water characterized by high dissolved oxygen concentrations. The preferred habitats vary with the season, temperature, dissolved oxygen content, flow rate, and precipitation; however, the waterdogs maintain home retreat areas under rocks, in burrows, or under substantial cover in backwater or eddy areas. As with other permanently aquatic salamanders, when interstitial spaces between substrates become compacted or filled with fine sediment, the amount of available foraging habitat and protective cover for salamanders is reduced, resulting in population declines (83 FR 257; January 3, 2018).

The longevity of Neuse River waterdogs is not known; however, their close relative *N. maculosus* may live for 30 or more years. Like many long-lived animals, breeding is delayed until a minimum body size is reached, and they tend to grow slowly. Generation time for Neuse River waterdogs is 10 to 15 years. They breed once per year, with mating in the fall or winter and spawning in the spring. Females lay a clutch of about 25–90 eggs, typically under large rocks with sand and gravel beneath them, or under similar cover (e.g., logs, holes in banks) in coastal rivers where rocky habitat is limited, and then guard the rudimentary nest.

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.

Our proposed rule described “foreseeable future” as the extent to which we can reasonably rely on predictions about the future in making determinations about the future conservation status of the species. The Service since codified its understanding of foreseeable future in 50 CFR 424.11(d) (84 FR 45020). In those regulations, we explain the term “foreseeable future” extends only so far into the future as the Service can reasonably determine that both the future threats and the species’ responses to those threats are likely. The Service will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species’ life-history characteristics, threat-projection timeframes, and environmental

variability. The Service need not identify the foreseeable future in terms of a specific period of time. These regulations did not significantly modify the Service’s interpretation; rather they codified a framework that sets forth how the Service will determine what constitutes the foreseeable future based on our long-standing practice. Accordingly, though regulations do not apply to the final rule for the Carolina madtom and Neuse River waterdog because they were proposed prior to their effective date, they do not change the Service’s assessment of foreseeable future for the Carolina madtom and Neuse River waterdog as contained in our proposed rule and in this final rule.

Analytical Framework

The SSA reports document the results of our comprehensive biological review of the best scientific and commercial data regarding the status of each species, including an assessment of the potential threats to each 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 reports; the full SSA reports can be found at Docket No. FWS-R4-ES-2018-0092 and on <http://www.regulations.gov>.

To assess viability of Carolina madtom and Neuse River waterdog, 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 process involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of each species and its resources, and the threats that influence each species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Carolina Madtom

To evaluate the current and future viability of the Carolina madtom, we considered a range of conditions to allow us to assess the species' resiliency, representation, and redundancy. We assessed resiliency for the Carolina madtom using population factors (Management Unit (MU) occupancy over time, approximate abundance, and recruitment) and habitat elements (water quality, water quantity, habitat connectivity, and instream substrate). For the purposes of this assessment, populations were delineated using the same three river basins that Carolina madtoms have historically occupied, namely the Tar, Neuse, and Trent River basins. Populations were further delineated using MUs, defined as one or more hydrologic unit code (HUC) 10 watersheds that species experts identified as the most appropriate unit for assessing population-level resiliency. To assess resiliency, we analyzed population factors as well as habitat elements that were determined in our analysis of the species' needs to have the most influence on the species. We then assessed the overall condition of each population. Overall population condition rankings were determined by combining the two population factors and four habitat elements. For a more detailed explanation of the condition

categories, see the SSA report (Service 2021a, pp. 15–19).

Metrics that speak to a species' adaptive potential, such as genetic and ecological variability, can be used to assess representation. Representation for the Carolina madtom can be described in terms of ecological variation seen in river basin variability (Tar, Trent, and Neuse River basins) and physiographic variability (eastern Piedmont and Coastal Plain). We assessed Carolina madtom redundancy by first evaluating occupancy within each of the hydrologic units that constitute MUs, and then we evaluated occupancy at the MU, and ultimately the population level.

Current Condition of Carolina Madtom

The historical range of the Carolina madtom included streams and rivers in the Tar-Pamlico, Neuse, and Trent basins, with documented historical distribution in 31 HUC10s in 11 MUs across the three populations (see Table 1, below). The results of surveys conducted from 2011 to 2018 suggest that the currently occupied range of the Carolina madtom includes four MUs from two populations, corresponding to the Tar and Neuse River basins; however, only one population (Tar) has multiple documented occurrences within the past 5 years. The species has been extirpated from the southern portion of its range, including a large portion of the Neuse River basin and the entire Trent River basin. The Carolina madtom currently occupies 9 of the 31 historically occupied HUC10s (with "currently" defined as the observation of at least one specimen from 2011 to 2018), 7 of which are in the Tar River basin and 2 in the Neuse River basin. At the population level, the overall current condition (= resiliency) was estimated to be moderate for the Tar population, very low for the Neuse population, and likely extirpated for the Trent population.

TABLE 1—POPULATION AND MANAGEMENT UNIT (MU) NAMING FOR CAROLINA MADTOM

Population/management unit
Tar:
Upper Tar.
Middle Tar.
Lower Tar.
Fishing Creek Subbasin.
Sandy-Swift.
Neuse:
Upper Neuse.
Middle Neuse.
Lower Neuse.
Little River.
Contentnea Creek.

TABLE 1—POPULATION AND MANAGEMENT UNIT (MU) NAMING FOR CAROLINA MADTOM—Continued

Population/management unit
Trent:
Trent.

We estimated that the Carolina madtom currently has low adaptive potential due to limited representation in two river basins and two physiographic regions. The species retains 33 percent of its known river basin variability, considering greatly reduced variability observed in the Neuse River population. In addition, compared to historical occupancy, the species currently retains very limited physiographic variability in the Coastal Plain (14 percent) and moderate variability in the Piedmont (56 percent).

The range of the Carolina madtom has always been very narrow, limited to the Tar, Neuse, and Trent River drainages. Within the identified representation areas, the species retains redundancy within the Tar River population (three MUs currently extant); however, it has limited redundancy (two MUs extant) in the Neuse River population and no redundancy (extirpated) in the Trent River population. Overall, the species has lost 55 percent of its redundancy across its narrow, endemic range.

Neuse River Waterdog

To evaluate the current and future viability of the Neuse River waterdog, we assessed a similar range of conditions as described above for Carolina madtom to allow us to consider the species' resiliency, representation, and redundancy. As with the madtom, populations were delineated using the three river basins that Neuse River waterdogs have historically occupied (*i.e.*, Tar-Pamlico, Neuse, and Trent River basins). "Tar-Pamlico" refers to the lower portion of the Tar River basin, which includes the Pamlico River. Because the river basin level is at a very coarse scale, populations were further delineated using MUs. MUs were defined as one or more HUC10 watersheds that species experts identified as most appropriate for assessing population-level resiliency. Resiliency is characterized, and overall population condition rankings and habitat condition rankings were determined, similarly as for the madtom.

Representation for the Neuse River waterdog can be described in terms of the size and range of the river systems it inhabits (medium streams to large rivers in three river basins), and

physiographic variability (Piedmont and Coastal Plain). Redundancy for the Neuse River waterdog is defined as multiple highly resilient populations (inclusive of multiple, resilient MUs) distributed throughout the species' historical range. That is, highly resilient populations, coupled with a relatively broad distribution, have a positive relationship to species-level redundancy.

Current Condition of Neuse River Waterdog

The historical range of the Neuse River waterdog included third and fourth order sized streams and rivers in the Tar-Pamlico, Neuse, and Trent basins, with documented historical distribution in 40 HUC10s in nine MUs across the three populations (see Table 2, below). Currently, the Neuse River waterdog is extant in all nine identified MUs; however, within those MUs, it is presumed extirpated from 35 percent (14 out of 40) of the historically occupied HUC10s, and another 25 percent of the streams are in low or very low condition. Of the nine MUs, two (22 percent) are estimated to have high resiliency, three (33 percent) moderate resiliency, and four (45 percent) low resiliency. At the population level, one of three populations (Tar-Pamlico) is estimated to have moderate resiliency, and two (Neuse and Trent) are estimated to have low resiliency.

TABLE 2—POPULATION AND MANAGEMENT UNIT (MU) NAMING FOR NEUSE RIVER WATERDOG

Population/management unit
Tar: Upper Tar. Middle Tar. Lower Tar. Sandy-Swift. Fishing Creek Subbasin.
Neuse: Upper Neuse. Middle Neuse. Lower Neuse.
Trent: Trent.

We estimated that the Neuse River waterdog currently has moderate adaptive potential, primarily due to ecological representation in three river basins and two physiographic regions. The species retains nearly all of its known river basin variability; however, the variability within the basins is reduced compared to historical distribution. In addition, compared to historical occupancy, the species currently retains moderate physiographic variability in the Coastal

Plain (87 percent) and in the Piedmont (67 percent). However, the Piedmont has experienced significant declines in occupancy, with nearly half of the MUs losing species occurrences. Of the 16 historically occupied Piedmont HUC10s, 7 are no longer occupied, and 9 have experienced loss.

Like the madtom, the range of the Neuse River waterdog has always been very narrow, limited to the Tar-Pamlico, Trent, and Neuse River drainages. Within the identified representation areas (*i.e.*, river basins), the species retains redundancy in terms of occupied HUC10s within the Tar-Pamlico River population (82 percent) and the Neuse River population (70 percent), but 67 percent of redundancy has been lost in the Trent River population. Overall, the species has lost 27 percent (11 out of 40 historically occupied HUC10s) of its redundancy across its narrow, endemic range.

Factors Influencing Viability of Neuse River Waterdog and Carolina Madtom

Several natural and anthropogenic factors may impact the status of species within aquatic systems. Generally, these factors can be categorized as either environmental stressors (*e.g.*, development, agriculture practices, or forest management) or systematic changes (*e.g.*, climate change, invasive species, dams or other barriers). The largest threats to the future viability of the Carolina madtom and Neuse River waterdog involve habitat degradation from stressors influencing the four habitat elements: Water quality, water quantity, instream habitat, and habitat connectivity. All of these factors are exacerbated by the effects of climate change. A brief summary of these primary stressors is presented below; for a full description of these stressors, refer to chapter 4 of the SSA report for each species.

Development and Pollution

Development refers to urbanization of the landscape, and the effects of urbanization may include alterations to water quality, water quantity, and habitat (both instream and streamside) (Service 2021ab, p. 40). Urbanization increases the amount of impervious surfaces, such as paved roads, parking lots, roofs, and even highly compacted soils like sports fields. Impervious surfaces prevent the natural soaking of rainwater into the ground and slow seepage into streams. Instead, the rainwater accumulates and flows rapidly into storm drains, which drain as runoff to local streams. This degrades stream habitat in three ways: Water quantity (high flow during storms),

water quality (sediment and pollutants washing into streams), and increased water temperatures due to the surfaces heating the water. Sedimentation, including short-term storm events, has been shown to reduce survival (Honeycutt et al. 2016, pp. 766–767), limit juvenile abundance (Bendik and Dries 2018, pp. 5916–5920), reduce body size (Gray et al. 2004, p. 719), or result in a significant decline in aquatic salamander density in streams (Welsh and Ollivier 1998, pp. 1123–1128; Welsh et al. 2019, pp. 7–10). Concentrations of contaminants, including nitrogen, phosphorus, salts, insecticides, polycyclic aromatic hydrocarbons, and personal care products, increase with urban development (Giddings et al. 2009, p. 2; Bringolf et al. 2010, p. 1,311). Water infrastructure development, including water supply, reclamation, and wastewater treatment, results in several pollution point discharges to streams.

Increasing urbanization results in more road development. By its nature, road development increases impervious surfaces, as well as land clearing and habitat fragmentation. Roads are generally associated with negative effects on the biotic integrity of aquatic ecosystems, including changes in surface water temperatures and patterns of runoff; sedimentation; and adding heavy metals (especially lead), salts, organics, ozone, and nutrients to stream systems (Trombulak and Frissell 2000, p. 18). These changes affect stream-dwelling organisms such as the Carolina madtom and Neuse River waterdog by displacing them from once-preferred habitats, as well as increasing exposure and assimilation of pollutants that can result in growth defects, decreased immune response, and even death. In addition, a common impact of road development is improperly constructed culverts at stream crossings. These culverts act as barriers, either because stream flow through the culvert varies significantly from the rest of the stream or because the culvert ends up being perched, so that aquatic organisms such as these species cannot pass through them.

Carolina madtoms and Neuse River waterdogs prefer clean water with permanent flow and are not tolerant of siltation and turbidity. Benthic vertebrates, such as the madtom and waterdog, have disproportionate rates of imperilment and extirpation due to pollution because stream bottoms are often the first habitats affected, particularly by sedimentation. Sedimentation increases embeddedness of stream substrates, making it more difficult for madtoms or salamanders to

burrow (Unger et al. 2020, pp. 121–122) and leaving them more exposed (e.g., to predation). Excess sedimentation influences nest site selection and reduces habitat availability (Guy et al. 2004, pp. 80–82, 85) and is related to a reduction in current distribution of salamanders compared to historical occupancy of sites (Quinn et al. 2013, pp. 78, 81–82). Furthermore, the Carolina madtom is classified as an “intolerant” species according to the North Carolina Division of Water Resources (NCDWR), meaning the species is most affected by environmental perturbations (NCDWR 2013, p. 19). Fine sediments can influence the survival, distribution, and abundance of Neuse River waterdog by “reduc[ing] the availability of food and cover, and hinder[ing] reproduction by smothering nests and eggs” (Braswell and Ashton 1985, p. 28).

All three of the river basins within the range of the Carolina madtom and Neuse River waterdog are affected by development, from an average of 7 percent in the Tar River basin to an average of 13 percent in the Neuse River basin (based on the 2011 National Land Cover Data). The Neuse River basin contains one-sixth of the entire State’s human population, indicating heavy development pressure on the watershed. The Middle Neuse MU contains 182 impaired stream miles, 9 major discharges, 272 minor discharges, and nearly 4,000 road crossings, all affecting the quality of the habitat for both species. The Middle Neuse is also 31 percent developed, with nearly 8 percent impervious surface, which changes natural streamflow, reduces appropriate stream habitat, and decreases water quality throughout the MU. For complete data on all of the populations, refer to appendices A and D of the SSA reports.

Agricultural Practices

The main impacts to the Neuse River waterdog and Carolina madtom from agricultural practices occur from water pumping for irrigation and when best management practices (BMPs) for conservation are not followed, causing sedimentation, and nutrient and chemical pollution. Sedimentation can fill interstitial spaces of streambed substrates, altering habitat suitability of nesting and retreat sites for madtoms and waterdogs; it can coat leaf litter, diminishing or destroying waterdog foraging habitat; and it can smother and kill eggs. Sedimentation from agriculture has been linked to reduced body size in salamanders and other amphibians (Gray 2002, pp. 23–34, 48, 105; Gray et al. 2004, pp. 719, 727).

Fertilizers and animal manure, which are both rich in nitrogen and phosphorus, are the primary sources of nutrient pollution from agricultural sources. Excess nutrients impact water quality when it rains or when water and soil containing nitrogen and phosphorus wash into nearby waters or leach into the water table or groundwater. Confined animal feeding operations and feedlots can cause degradation of aquatic ecosystems and may cause direct effects to the species (e.g., death resulting from hypoxia), primarily because of manure management issues. Fertilized soils, manure, and livestock can be significant sources of nitrogen-based compounds like ammonia and nitrogen oxides. Ammonia can be harmful to aquatic life when concentrated in surface waters. For madtoms and waterdogs, excess ammonia can cause a number of problems, including alteration of metabolism, injury to gill tissue, and reduced growth rates. Extreme levels of ammonia can cause death.

Excessive water withdrawal or water withdrawal done illegally (without the necessary permit, during dry times of year) may cause impacts to the amount of water available to downstream sensitive areas during low flow months, resulting in dewatering of channels and displacement of fish and permanently aquatic salamanders, leading in turn to potential desiccation and death. According to the 2011 National Land Cover Data, all of the watersheds within the range of the Carolina madtom and Neuse River waterdog are affected by agricultural land uses, most with 25 percent or more of the watershed having been converted for agricultural use.

Forest Management

Silvicultural activities, when performed according to strict forest practices guidelines (FPGs) or BMPs, can retain adequate conditions for aquatic ecosystems; however, when FPGs/BMPs are not followed or if they fail, these practices can also contribute to the myriad of stressors facing aquatic systems in the Southeast, including North Carolina. Both small- and large-scale clearing of forests have been shown to have a significant impact upon the physical, chemical, and biological characteristics of adjacent small streams (Allan 1995, pp. 324–327; Valente-Neto 2015, p. 116). Clearcutting and harvests in riparian systems can eliminate shade provided by forest canopies, exposing streams to more sunlight and increasing the instream water temperature (Swift and Messer 1971, p. 111; Hewlett and Forston 1982, p. 983; GB Rishel 1982, p. 112; Lynch et al. 1984, p. 161; Allan

1995, p. 325; Keim and Shoenholtz 1999, p. 197; Carroll et al. 2004, p. 275; B.D. Clinton 2011, p. 979; Caldwell et al. 2014, p. 3). The increase in stream temperature and light after deforestation alters the macroinvertebrate and other aquatic species richness and abundance composition in streams (Wenger 1999, p. 35; Caldwell et al. 2014, p. 3). As stated above, both the Neuse River waterdog and Carolina madtom are sensitive to changes in temperature, and sustained temperature increases will stress and possibly lead to mortality for these species.

Forestry activities can include the construction of logging roads through the riparian zone, and this can directly degrade nearby stream environments. Roads can cause point-source pollution and sedimentation, as well as sedimentation traveling downstream into sensitive habitats. These effects lead to stress and mortality for both species, as discussed above under “Development and Pollution,” and as reported in studies of forestry-related sedimentation effects on survival of aquatic vertebrates (Lowe et al. 2004, entire; Moseley et al. 2008, entire; Peterman & Semlitsch 2009, entire). While BMPs are presently widely adhered to, they were not always common practice, and implementation is not perfect. The most recent surveys of the Neuse and Tar-Pamlico River basins show that the average BMP implementation rate is approximately 88 to 90 percent (Coats 2017, p. 38). Accordingly, while improper implementation is uncommon, failure to implement or inadequate implementation can have negative effects on sensitive aquatic species. Further, the most recent assessment of forestry BMPs in North Carolina reported that improperly implemented BMPs associated with streamside management zones and stream crossings were frequently associated with risks to water quality (Coats 2017, p. 9).

Invasive Species

There are many areas across North Carolina where invasive species have invaded aquatic communities; are competing with native species for food, light, or breeding and nesting areas; and are impacting biodiversity. The flathead catfish (*Pylodictis olivaris*) is an invasive species that most likely impacts Carolina madtom distribution and may also have an impact on Neuse River waterdog distribution. The flathead catfish is an apex predator, known to influence native fish populations, including predation on benthic fishes, including madtoms, and

it occurs in both the Neuse and Tar-Pamlico River basins. It is not known whether this fish also preys on waterdogs, but it is speculated that Neuse River waterdog inactivity during warmer months is in part due to the avoidance of large, predatory fishes (Braswell 2005, p. 870).

Hydrilla (*Hydrilla verticillata*), an invasive aquatic plant, alters stream habitat, decreases flows, contributes to sediment buildup in streams, and can serve as a vector for a neurotoxic cyanobacteria known to affect other vertebrates (*e.g.*, fishes, turtles, waterbirds, and their predators). High sedimentation can cause suffocation, reduce stream flow necessary for madtom and waterdog survival, smother eggs, and degrade leaf pack foraging habitat by causing prey items to abandon them. Hydrilla occurs in several watersheds where both species occur and has been recently documented from the Neuse system and the Tar River. While there are no data to indicate that hydrilla currently has population-level effects on these two species, its spread is expected to increase in the future and control or eradication is difficult.

Red swamp crayfish (*Procambarus clarkii*) is an invasive crayfish species native to the southern Mississippi River drainage in the Gulf Coastal Plain and Florida panhandle to Mexico. Establishment of nonnative populations in eastern North Carolina are likely from release from aquaculture or from the aquarium trade (Nagy et al. 2020, unpaginated). Red swamp crayfish are physical ecosystem engineers, constructing extensive burrows that can collapse stream banks and cause erosion. They are prolific opportunistic omnivores, and they not only outcompete native crayfish but also other native animals, including amphibians like Neuse River waterdog, by reducing their densities in their habitat. Recent surveys have found that when red swamp crayfish are present, Neuse River waterdogs are not (Braswell, Hall, and Humphries 2020, pers. comm.).

Dams and Barriers

Extinction of some North American freshwater fish can be traced to impoundment and inundation of riffle habitats in all major river basins of the central and eastern United States. Upstream of dams, the change from flowing to impounded waters, increased depths, increased buildup of sediments, decreased dissolved oxygen, and the drastic alteration in resident fish populations can threaten the survival of fish and aquatic salamanders and their

overall reproductive success. Downstream of dams, fluctuations in flow regimes, minimal releases and scouring flows, seasonal dissolved oxygen depletion, reduced or increased water temperatures, and changes in fish assemblages can also threaten the survival and reproduction of many aquatic species. Dams have also been identified as causing genetic segregation or isolation in river systems—resident species can no longer move freely through different habitats and may become genetically isolated from other populations throughout the river. Improperly constructed culverts at stream crossings also can act as significant barriers and have some similar effects as dams on stream systems. Fluctuating flows through the culvert can vary significantly from the rest of the stream, preventing aquatic species passage and scouring downstream habitats. If a culvert ends up being perched above the stream bed, aquatic organisms cannot pass through it. All of the MUs containing Neuse River waterdogs and Carolina madtom populations have been impacted by dams, with as few as 11 dams in the Contentnea Creek MU to 287 dams in the Middle Neuse MU.

Energy Production and Mining

The Neuse River waterdog and its habitat face impacts from oil and gas production, coal power, hydropower, and the use of biofuels. Coal mined from other States is used for energy production in North Carolina. Damage to fish and wildlife from exposure to coal ash slurry ranges from physiological, developmental, and behavioral toxicity to major population- and community-level changes. Contamination of aquatic habitats by coal-combustion residue can result in the accumulation of metals and trace elements in larval amphibians, including arsenic, cadmium, chromium, copper, mercury, lead, selenium, and vanadium, potentially leading to developmental, behavioral, and physiological effects (Rowe et al. 2002, entire). As recently as October 2016, Neuse River waterdogs in the Neuse River were exposed to coal ash slurry when Hurricane Matthew caused inundation of coal ash storage ponds. Coal-fired power plants pump large volumes of water to produce electricity, and aquatic organisms such as larval waterdogs can be pulled in and killed unless measures are sufficient to keep organisms from being impacted. After water is used for electricity production, it is returned to surface waters, but the temperature can be considerably higher than the temperature of the stream,

reducing the ability of the species to spawn.

Hydropower as a domestic energy source is becoming more prevalent in North Carolina, including areas where the Neuse River waterdog occurs. Like other impoundments, streams and rivers impounded by hydropower dams are changed from lotic systems to lentic systems, fragmenting habitats and disrupting movements and migrations of fish and other aquatic organisms like the Neuse River waterdog. Downstream water quality can also suffer from low dissolved oxygen levels and altered temperatures. In addition, hydropower generation can significantly change flow regimes downstream of hydropower dams, and can affect other riverine processes, such as sediment transport, nutrient cycling, and woody debris transport.

Potential impacts to both species from oil and gas extraction are numerous; they include water quality and water quantity impacts, riparian habitat fragmentation and conversion, increased sand mining (used in oil and gas extraction), and increased road and utility corridors. While oil and gas extraction currently does not, and likely will not, occur in the Tar River basin due to lack of subsurface shale deposits, impacts from shale gas extraction could occur in the Neuse River basin (Service 2021b, p. 46). Future impacts from oil and gas exploration and production are certain, as North Carolina has recently begun to allow fracking operations to drill for natural gas Statewide.

Climate Change

Aquatic systems are encountering changes and shifts in seasonal patterns of precipitation and runoff as a result of climate change. While both of these species have evolved in habitats that experience seasonal fluctuations in discharge, global weather patterns (*e.g.*, El Niño or La Niña) can have an impact on the normal regimes. Even during naturally occurring low flow events, amphibians and fish either become stressed because they exert significant energy to move to deeper waters or they may succumb to desiccation. Because low flows in late summer and early fall are stress-inducing, droughts during this time of year result in an increase in stress and, potentially, an increased rate of mortality.

Droughts have impacted all river basins within the range of both species, from an “abnormally dry” ranking for North Carolina in 2001 on the Southeast Drought Monitor scale to the highest ranking of “exceptionally dry” for the entire range of both species in 2002 and 2007. The 2015 drought data indicated

that the entire Southeast was under conditions ranging from “abnormally dry” to “moderate drought” or “severe drought.” These data are from the first week in September, which as noted above is a very sensitive time for drought to be affecting both species. Tributaries in the Neuse River basin had consecutive drought years in the period 2005–2012, indicating sustained stress on the species over a long period of time. Amphibians and fish have limited refugia from disturbances such as droughts and floods, and they are completely dependent on specific water temperatures to complete their physiological requirements. Changes in water temperature lead to stress and increased mortality, and also increase the likelihood of extinction for both species. Increases in the frequency and strength of storm events, which are caused by climate change, alter stream habitat, either directly via channelization or clearing of riparian areas or indirectly via high streamflows that reshape the channel and cause sediment erosion. The large volumes and velocity of water, combined with the extra debris and sediment entering streams following a storm, stress, displace, or kill Neuse River waterdogs and Carolina madtoms.

Synergistic Effects

In addition to individually impacting the species, it is likely that several of the above summarized risk factors are acting synergistically or additively on both species. The combined impact of multiple stressors is likely more harmful than a single stressor acting alone. For instance, effects of sedimentation and predatory fishes on large aquatic salamanders have been found, in which larvae were more affected by predatory fishes and adults were more affected by sedimentation, suggesting that persistence of salamanders was especially threatened in streams with both stressors (Lowe et al. 2004, pp. 164, 167–170). As an example, within Carolina madtom and Neuse River waterdog habitat, there are 182 miles of impaired streams in the Middle Neuse MU. They have low benthic-macroinvertebrate scores, low dissolved oxygen, and low pH, and they contain *Escherichia coli* (also known as *E. coli*). There are 9 major and 272 minor discharges within this MU, along with 287 dams, almost 4,000 road crossings, and droughts recorded for 3 consecutive years in 2008–2010. If a small, but improperly installed, culvert at a road crossing prevents fish from moving up or downstream, the fish would not be able to escape to deeper areas of the stream during droughts. Similarly, a

discharge into a stream has more impact on aquatic species if there are no precipitation events immediately following to help flush the system. These combinations of stressors on the sensitive aquatic species in this habitat likely impact both species more severely than any one factor alone.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA reports, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. Our assessment of the current and future conditions encompasses and incorporates the threats individually and cumulatively. Our current and future condition assessment is iterative because it accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Conservation Actions

The Service and State wildlife agencies are working with numerous partners to provide technical guidance and offer conservation tools to meet both species and habitat needs in aquatic systems in North Carolina. Land trusts are targeting key parcels for acquisition; Federal, State, and university biologists are surveying and monitoring species occurrences; and there has been increased interest in efforts for captive propagation and species population restoration via augmentation, expansion, and reintroduction efforts, especially for the Carolina madtom. However, some of these programs are in their infancy, and currently none provides species-level protection at a scale such that the species would not warrant listing under the Act.

Future Scenarios

For the purpose of this assessment, we define viability as the ability of the species to sustain populations in the wild over time. To address uncertainty associated with the degree and extent of potential future stressors and their impacts on species' requisites, resiliency, redundancy, and representation were assessed using four plausible future scenarios. These

scenarios were based, in part, on the results of urbanization and climate models that predict changes in habitat used by the Carolina madtom and the Neuse River waterdog. We developed scenarios by eliciting expert information on two main stressors, urbanization and climate change, that will impact the species in the future. The models that were used to forecast both factors projected 50 years into the future. Using the best available data to forecast plausible future scenarios allows the Service to determine if a species may become an endangered species in the foreseeable future. Relatively long species' life spans, well-developed downscaled climate models specific to the region, and adequate human population growth data available for the Southeast region provide some confidence in the range of outcomes predicted over 50 years. Beyond that timeframe, there is too much uncertainty in threats that will be occurring on the landscape and how the species may respond to those threats. For more detailed information on these models and their projections, please see the SSA reports (Service 2021ab, chapter 5).

In the first scenario, the “Status Quo” scenario, factors that influence current populations of the Carolina madtom and the Neuse River waterdog were assumed to follow current trends over the 50-year time horizon. Climate models predict that, if emissions continue at current rates, the Southeast will experience an increase in low flow (drought) events (IPCC 2013, p. 7). Likewise, this scenario assumed the ‘business as usual’ (BAU) pattern of urban growth, which predicts that urbanization will continue to increase rapidly (Terando et al. 2014, p. 1). This continued growth in development means increases in impervious surfaces, increased variability in streamflow, channelization of streams or clearing of riparian areas, and other negative effects explained above under “Development and Pollution.” The “Status Quo” scenario also assumed that current conservation efforts would remain in place but that no new actions would be taken.

In the second scenario, the “Pessimistic” scenario, factors that negatively influence Neuse River waterdog and the Carolina madtom populations get worse; reflecting Climate Model representative concentration pathway (RCP) 8.5 (Wayne 2013, p. 11), effects of climate change are expected to be magnified beyond what is experienced in the “Status Quo” scenario. These predicted effects include extreme heat, more

storms and flooding, and exacerbated drought conditions (IPCC 2013, p. 7). Based on the results of the SLEUTH (slope, land use, exclusion, urban, transportation, and hillshade) BAU model (Terando et al. 2014, entire), urbanization in the relevant watersheds could expand to triple the amount of developed area, resulting in large increases of impervious surface cover and, potentially, consumptive water use. Increased urbanization and climate change effects are likely to result in increased impacts to water quality, water flow, and habitat connectivity, and we predict that there is limited capacity for species restoration under this scenario.

In the third scenario, labeled the “Optimistic” scenario, factors that influence population and habitat conditions of the Neuse River waterdog and the Carolina madtom are expected to be somewhat improved. Reflecting Climate Model RCP 2.6 (Wayne 2013, p. 11), climate change effects are predicted to be minimal under this scenario and would not include increased temperatures, and storms or droughts are as set forth in the “Status Quo” and “Pessimistic” scenario predictions. Urbanization is also predicted to have less impact in this scenario, as reflected by effects that are slightly lower than BAU model predictions (Terando et al. 2014, table 5–1). Because water quality, water flow, and habitat impacts are predicted to be less severe in this scenario as compared to others, it is expected that the species would have slightly positive responses. Targeted permanent protection of riparian areas is a potential conservation activity that could benefit these species, and current efforts are considered successful as part of the “Optimistic” scenario.

In the fourth scenario, the “Opportunistic” scenario, those landscape-level factors (e.g., development and climate change) that are influencing populations of the Neuse River waterdog and the Carolina madtom get moderately worse, reflecting Climate Change Model RCP 4.5 (Wayne 2013, p. 11) and SLEUTH BAU (Terando et al. 2014, table 5–1). Effects of climate change are expected to be moderate, resulting in some increased impacts from heat, storms, and droughts (IPCC 2013, p. 7). Urbanization in this scenario reflects the moderate SLEUTH BAU levels, indicating approximately double the amount of developed area compared to current levels. Overall, it is expected that the synergistic impacts of changes in water quality, water flow, and habitat connectivity will negatively affect both species, although current land

conservation efforts will benefit the species in some watersheds.

Future Conditions of the Carolina Madtom and Neuse River Waterdog

For details regarding the predicted future under each scenario, see chapter 6 of the SSA reports for each species (Service 2021ab).

Estimates of future resiliency for the Carolina madtom are low, as are estimates for representation and redundancy. Similarly, estimates of future resiliency for the Neuse River waterdog are moderate to low, as are estimates for representation and redundancy. Both species face a variety of risks from declines in water quality, loss of stream flow, riparian and instream fragmentation, and deterioration of instream habitats, and the madtom is particularly susceptible to predation from the invasive flathead catfish. These risks, which are expected to be exacerbated by urbanization and climate change, were important factors in our assessment of the future viability of the Carolina madtom and Neuse River waterdog. Given losses of resiliency, populations become more vulnerable to extirpation, resulting in concurrent losses in representation and redundancy. Predictions of Carolina madtom habitat conditions and population factors suggest possible extirpation in one of two currently extant populations. The one population predicted to remain extant (Tar) is expected to be characterized by low occupancy and abundance. Predictions of Neuse River waterdog habitat conditions and population factors suggest possible extirpation in two of three currently extant populations. Similar to the madtom, the one waterdog population predicted to remain extant (Tar-Pamlico) is expected to be characterized by low occupancy and abundance in the future.

Determinations of Carolina Madtom and Neuse River Waterdog Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of “endangered species” or “threatened species.” The Act defines an “endangered species” as a species that is in danger of extinction throughout all or a significant portion of its range, and a “threatened species” as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. 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.

Carolina Madtom: Status Throughout All of Its Range

The historical range of the Carolina madtom included third and fourth order streams and rivers in the Tar, Neuse, and Trent drainages, with documented historical distribution in 11 MUs within 3 former populations, the Tar, Neuse, and Trent. The Carolina madtom is presumed extirpated from 55 percent (6) of the historically occupied MUs. Of the five MUs that remain occupied, one is estimated to have high resiliency, one with moderate resiliency, two with low resiliency, and one with very low resiliency. Scaling up from the MU to the population level, the Tar population is estimated to have moderate resiliency, the Neuse population is characterized by very low resiliency, and the Trent population is presumed to be extirpated. Of streams that were once part of the species’ range, 82 percent are estimated to be in low condition or likely extirpated. Once known to occupy streams in two physiographic regions, the species has also lost substantial physiographic representation with an estimated 44 percent loss in Piedmont watersheds and an estimated 86 percent loss in Coastal Plain watersheds.

Estimates of current resiliency for Carolina madtom are low, as are estimates for representation and redundancy. The Carolina madtom faces a variety of ongoing threats from declines in water quality, loss of stream flow, riparian and instream fragmentation, and deterioration of instream habitats (Factor A). This species also faces the threat of predation from the invasive flathead catfish (Factor C). These threats are expected to be exacerbated by continued urbanization (Factor A) and climate change (Factor E). Given current rates of resiliency, populations are vulnerable to extirpation from stochastic events, in turn, resulting in concurrent losses in representation and redundancy.

The current conditions as assessed in the Carolina madtom SSA report show that 55 percent of the management units over three populations (river systems) are presumed extirpated. The Carolina madtom currently has two of three

remaining populations, but one of those populations (Neuse) is characterized by “very low” resiliency. Once known to occupy streams in two physiographic regions, the species has also lost substantial physiographic representation with an estimated 44 percent loss in Piedmont watersheds and an estimated 86 percent loss in Coastal Plain watersheds. The one moderately resilient population (Tar) was determined not to be sufficient for the species to withstand catastrophic events, nor is it sufficient to enable the species to maintain adaptive capacity. Therefore resiliency, redundancy, and representation are all at levels that put the species at risk of extinction throughout its range now. We conclude that the species is currently in danger of extinction throughout all of its range. Because the species is already in danger of extinction throughout its range, a threatened status is not appropriate.

Carolina Madtom: Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the Carolina madtom is in danger of extinction throughout all of its range, and accordingly, did not undertake an analysis of any significant portions of its range. Because we have determined that the Carolina madtom 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 Service does not undertake an analysis of significant portions of a species’ range if the species warrants listing as threatened throughout all of its range.

Carolina Madtom Determination of Status

Our review of the best available scientific and commercial information indicates that the Carolina madtom meets the Act’s definition of an endangered species. Therefore, we are listing the Carolina madtom as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Neuse River Waterdog: Status Throughout All of Its Range

The historical range of the Neuse River waterdog likely included all third and fourth order streams and rivers throughout the Tar-Pamlico, Neuse, and Trent drainages, with documented historical distribution in nine MUs within three populations. Of those nine occupied MUs, two (22 percent) are estimated to have high resiliency, two (22 percent) moderate resiliency, and five (56 percent) low resiliency. Scaling up from the MU to the population level, one of three populations (the Tar population) is estimated to have moderate resiliency, and two (the Neuse and Trent populations) are characterized by low resiliency. In short, 60 percent of streams that were once part of the species’ range are estimated to be in low condition or likely extirpated. The species is known to occupy streams in two physiographic regions, but it has lost physiographic representation with an estimated 43 percent loss in Piedmont watersheds and an estimated 13 percent loss in Coastal Plain watersheds.

The Neuse River waterdog faces threats from declines in water quality, loss of stream flow, riparian and instream fragmentation, and deterioration of instream habitats (Factor A). These threats are expected to be exacerbated by continued urbanization (Factor A) and effects of climate change (Factor E). Given current and future decreases in resiliency, populations become more vulnerable to extirpation from stochastic events, in turn, resulting in concurrent losses in representation and redundancy. The range of plausible future scenarios of Neuse River waterdog habitat conditions and population factors suggest reduced viability into the future. Under Scenario 1, the “Status Quo” option, a loss of resiliency, representation, and redundancy is expected. Under this scenario, we predicted that no MUs would remain in high condition, two would be in moderate condition, four would be in low condition, and three MUs would be likely extirpated. Redundancy would be reduced to four MUs in the Tar Population and two in the Neuse Population. Representation would also be reduced, primarily with reduced variability in the Piedmont and Coastal Plain.

Under scenario two, the “Pessimistic” option, we predicted substantial losses of resiliency, representation, and redundancy. Redundancy would be reduced to four MUs in one population, and the resiliency of that population is expected to be low. Five MUs were

predicted to be extirpated, and, of the remaining four MUs, all would be in low condition. All measures of representation are predicted to decline under this scenario, leaving remaining Neuse River waterdog populations underrepresented in river basin and physiographic variability.

Under scenario three, the “Optimistic” option, we predicted slightly higher levels of resiliency, representation, and redundancy than were estimated under the Status Quo or Pessimistic options. Three MUs would be in high condition, one in moderate condition, and the remaining five would be in low condition. Despite predictions of population persistence in the Neuse and Trent River basins, these populations are expected to retain only low levels of resiliency; thus, levels of representation are also predicted to decline under this scenario.

Finally, under scenario four, the “Opportunistic” option, we predicted reduced levels of resiliency, representation, and redundancy. One MU would be in high condition, three would be in moderate condition, three would be in low condition, and two would be likely extirpated. Redundancy would be reduced with the loss of the Trent population. Under the “Opportunistic” scenario, representation is predicted to be reduced, with 67 percent of formerly occupied river basins remaining occupied and with reduced variability in the Piedmont and Coastal Plain physiographic regions. Both the “Optimistic” and “Opportunistic” scenarios were determined to be “unlikely” in the analysis, while the most likely scenarios were “Status Quo” and “Pessimistic.” Under either of these more likely scenarios, resiliency is low in most of the remaining populations, and many populations are likely extirpated so that redundancy and representation are significantly reduced. This expected reduction in both the number and distribution of resilient populations is likely to make the species vulnerable to catastrophic disturbance.

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we predict that the population and habitat factors used to determine the resiliency, representation, and redundancy for the Neuse River waterdog will continue to decline. Thus, after assessing the best available information, we conclude that the Neuse River waterdog 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.

First, we considered whether the Neuse River waterdog is presently in danger of extinction and determined that proposing endangered status is not appropriate. The current conditions as assessed in the Neuse River waterdog SSA report show that the species exists in nine MUs over three different populations (river systems) over a majority (65 percent) of the species' historical range. The Neuse River waterdog still exhibits representation across both physiographic regions, and extant populations remain across the range. In short, while the primary threats are currently acting on the species and many of those threats are expected to continue into the future, we did not find that the species is currently in danger of extinction throughout all of its range. However, according to our assessment of plausible future scenarios, the species is likely to become an endangered species in the foreseeable future throughout all of its range. Fifty years was considered "foreseeable" in this case because it included projections from both available models, and Neuse River waterdogs are a long-lived and slow-growing species. We can reliably predict both the future threats and the species' responses to those threats over 50 years as presented in the models of predicted urbanization and climate change.

As discussed above, the range of plausible future scenarios of Neuse River waterdog habitat conditions and population factors suggest reduced viability into the future. Both the "Optimistic" and "Opportunistic" scenarios were determined to be "unlikely" in the analysis, while the most likely scenarios were "Status Quo" and "Pessimistic." Under either of these more likely scenarios, resiliency is low in most of the remaining populations, and many populations are likely extirpated so that redundancy and representation are significantly reduced. This expected reduction in both the number and distribution of resilient populations is likely to make the species vulnerable to catastrophic disturbance. Accordingly, we find the Neuse River waterdog warrants listing as threatened because it is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Neuse River Waterdog: Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center*

for Biological Diversity v. Everson, 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity*), vacated the aspect of the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37578; July 1, 2014) that provided that the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluate whether the species is endangered in any significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the "significance" question or the "status" question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Center for Biological Diversity*, we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.*, endangered). In undertaking this analysis for Neuse River waterdog, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered.

For the Neuse River waterdog, 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: Declines in water quality, loss of stream flow, riparian and instream fragmentation, deterioration of instream habitats, and cumulative effects. We found a concentration of threats in the Trent River basin and the Upper and Middle Neuse River portions of the Neuse River waterdog's range. The species has experienced declines throughout its range, but most notably in the Piedmont portions of the upper and Middle Neuse River basin and the southern portion of its range, the Trent River basin.

The Neuse River waterdog population in the Trent has experienced a 67 percent decline in redundancy, with overall very low resiliency currently.

Agriculture practices and CAFOs, numerous in the southeastern coastal plain of North Carolina, particularly in the Trent River basin, contribute to poor water quality and fragmented or deteriorated instream habitats, influencing resiliency of Neuse River waterdogs in this portion of the range.

The waterdog populations in the Upper and Middle Neuse basin also exhibit current low resiliency with only a 10 to 30 percent probability of species' persistence. Exceptionally high development pressure from the expanding Triangle Region of central North Carolina has contributed to declines in water quality, loss of stream flow, fragmentation of riparian and instream habitats, and overall deterioration of instream habitat for the Neuse River waterdog.

Since these management units have seen populations reduced to very low condition, this circumstance—in combination with the other threats acting on the species throughout its range—may indicate that there is a concentration of threats in these basins such that the species may be in danger of extinction in these portions of the range.

Small, isolated populations often exhibit reduced levels of genetic variability, which diminishes the species' capacity to adapt and respond to environmental changes, thereby decreasing the probability of long-term persistence. Small populations may experience reduced reproductive vigor, for example, due to inbreeding depression. Isolated individuals may have difficulty reproducing. The problems associated with small population size and vulnerability to random demographic fluctuations or natural catastrophes are further magnified by synergistic interactions with other threats, such as those discussed above. Based on our review of information and the synergistic effects of threats exacerbated by the very low-condition populations in the Trent, Upper Neuse, and Middle Neuse basins, we find that there is information that the populations in these basins may be in danger of extinction.

Because we have determined that the Trent, Upper Neuse, and Middle Neuse basins are portions of the range that may be in danger of extinction, we next evaluate whether those portions of the range may be significant. As an initial note, the Service's most recent definition of "significant" within agency policy guidance has been invalidated by court order (see *Desert Survivors v. Dep't of the Interior*, No. 16-cv-01165 (N.D. Cal. Aug. 24, 2018)). Therefore, for purposes of this analysis,

the Service is evaluating potentially significant portions of the range by applying any reasonable definition of “significant” in terms of its biological importance. Factors we considered in the “significance” analysis were: (1) Whether the portion is large geographically or in its contribution to resiliency, redundancy, and representation relative to the remainder of the range; (2) whether the portion contains high-quality habitat relative to the remainder of the range; (3) whether the portion constitutes high-value or unique habitat for the species; or (4) whether the portion contains habitat that is essential to the life history, and therefore the overall conservation, of the species.

We examined the first question of whether these portions could be significant portions of the Neuse River waterdog’s range by examining their contribution to the resiliency, redundancy, and representation of the species. We determined that the Trent MU contains 1 out of 20 occupied HUC10 watersheds identified in the SSA report; thus, the Trent represents approximately 5 percent of the geographical range of the species. Similarly, the Upper Neuse MU contains 1 out of 20 HUC10 watersheds, or approximately 5 percent of the range as well. The Middle Neuse MU contains 4 out of 20 HUC10 watersheds, or approximately 20 percent of the geographical range. Currently, these areas individually or together (representing approximately 30 percent) represent a small portion of the waterdog’s geographical range. Because these units collectively have few healthy populations, they are not currently contributing in an important way to the species’ overall resiliency.

Neuse River waterdog populations are distributed over two physiographic regions in three river basins, and we considered geographic range as a surrogate for geographic variation and proxy for potential local adaptation and adaptive capacity. The Piedmont streams in the upper and middle Tar and upper and middle Neuse river basins contain similar features and instream habitats as those of the Coastal Plain streams in the lower Tar-Pamlico, lower Neuse, and Trent River basins. There are no data indicating genetic or morphological differentiation between the three river basins for the species. Further, the waterdog occurs in similar aquatic habitats and does not use unique observable environmental or behavioral characteristics attributable to any of the basins. Therefore, it exhibits similar basin-scale use of habitat.

At a management unit level, the Trent, Upper Neuse, and Middle Neuse MUs occur in stream habitat comprised of similar substrate types to the other MUs where the Neuse River waterdog performs the important life-history functions of breeding, feeding, and sheltering, and occurs in areas with water quality sufficient to sustain these essential life-history traits. The Trent, Upper Neuse, and Middle Neuse do not act as a refugia for the species or as an important spawning ground. Since the waterdog occurs in similar aquatic habitats, the Trent, Upper Neuse, and Middle Neuse exhibit similar habitat use as populations in the remainder of the range. Therefore, there is no unique, observable environmental usage or behavioral characteristics attributable to just the Trent, Upper Neuse, and Middle Neuse MUs.

Overall, we found no substantial information that would indicate the Trent, Upper Neuse, or Middle Neuse are portions of the range that may be significant in terms of their overall contribution to the species’ resiliency, redundancy, and representation, or that they may be significant in terms of high-quality habitat or habitat that is otherwise important for the species’ life history. As a result, we determined there is no portion of the Neuse River waterdog’s range that constitutes a significant portion of the 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). Accordingly, we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Determination of Neuse River Waterdog Status

Our review of the best available scientific and commercial information indicates that the Neuse River waterdog meets the Act’s definition of a threatened species. Therefore, we are listing the Neuse River waterdog 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 includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan 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 Raleigh Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations,

businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Following publication of this final rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of North Carolina will be eligible for Federal funds to implement management actions that promote the protection or recovery of the Carolina madtom and Neuse River waterdog. Information on our grant programs that are available to aid species recovery can be found at: <http://www.fws.gov/grants>.

Please let us know if you are interested in participating in recovery efforts for the Carolina madtom and Neuse River waterdog. 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 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)(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 any endangered or threatened species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph may include, but are not limited to, management and any other landscape-altering activities on Federal lands administered by the Service, U.S. Forest Service, and National Park Service;

issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

Carolina Madtom

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 listing on proposed and ongoing activities within the range of the listed species. At this time, we are unable to identify specific activities that would not be considered to result in a violation of section 9 of the Act because the Carolina madtom occurs in a variety of habitat conditions across its range and it is likely that site-specific conservation measures may be needed for activities that may directly or

indirectly affect the species. Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act if they are not authorized in accordance with applicable law; this list is not comprehensive:

- (1) Unauthorized handling or collecting of the species;
- (2) Destruction/alteration of the species' habitat by discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or diversion or alteration of surface or ground water flow into or out of the wetland (*i.e.*, due to roads, impoundments, discharge pipes, stormwater detention basins, etc.);
- (3) Activities that result in direct or indirect destruction of riparian habitat;
- (4) Modification of the channel or water flow of any stream or removal or destruction of emergent aquatic vegetation in any body of water in which the Carolina madtom is known to occur;
- (5) Discharge of chemicals or fill material into any waters in which the Carolina madtom is known to occur; and
- (6) Pesticide applications in violation of label restrictions.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Raleigh Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Neuse River Waterdog

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 listing on proposed and ongoing activities within the range of a listed species. The discussion below regarding protective regulations under section 4(d) of the Act complies with our policy.

II. Final Rule Issued Under Section 4(d) of the Act for the Neuse River Waterdog Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as he or she 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 rule that is designed to address the Neuse River waterdog's specific threats and conservation needs. Although the statute does not require the Service to make a "necessary and advisable" finding with respect to the adoption of specific prohibitions under section 9, we find that this rule 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 Neuse River waterdog. As discussed above under Summary of Biological Status and Threats, we have concluded that the Neuse River waterdog is likely to become in danger of extinction within the foreseeable future primarily due to habitat degradation from stressors influencing water quality, water quantity, instream habitat, and habitat connectivity. The provisions of this 4(d) rule will promote conservation of the Neuse River waterdog by encouraging management of the landscape in ways that meet both land management considerations and the conservation needs of the Neuse River waterdog. The provisions of this rule are one of many tools that the Service will use to promote the conservation of the Neuse River waterdog.

Provisions of the 4(d) Rule

This 4(d) rule will provide for the conservation of the Neuse River waterdog 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.

Import/export, possession, transportation, sale, and commerce are of concern for many aquatic amphibians, primarily because rare, strange-looking amphibians with frilly external gills (like the Neuse River waterdog) are highly sought after in the global pet trade. Regulating these activities will help protect the Neuse River waterdog from exploitation.

As discussed above under Summary of Biological Status and Threats, habitat degradation from stressors influencing water quality, water quantity, instream habitat, and habitat connectivity are affecting the status of the Neuse River waterdog. A range of activities have the potential to affect the Neuse River waterdog, including development, pollution, agricultural practices, land conversion, incompatible forest management, invasive species, dams and barriers, and energy production and mining. Regulating incidental take associated with these activities will help preserve the species' remaining populations, slow its rate of decline, 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 regulations at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating incidental take will help preserve the species' remaining populations, slow their rate of decline, and decrease synergistic, negative effects from other threats. Protecting the Neuse River waterdog from direct forms of take, such as physical injury or killing, whether incidental or intentional, will help preserve and recover the species. Therefore, we prohibit intentional take of Neuse River waterdog, including, but not limited to, capturing, handling, trapping, collecting, or other activities. Also, as discussed above under Summary of Biological Status and Threats, habitat degradation from stressors influencing water quality, water quantity, instream habitat, and habitat connectivity are affecting the status of the Neuse River waterdog. Across the species' range, stream and water quality have been degraded physically by sedimentation, pollution, contaminants, impoundments, channelization, destruction of riparian habitat, and loss of riparian vegetation due to development, agricultural practices, land conversion, incompatible forest management, invasive species, dams and barriers, and energy production and mining. Other habitat or hydrological alteration, such as ditching, draining, stream diversion, or diversion or alteration of surface or ground water flow, into or out of the stream, will impact the habitat of the species. Therefore, we prohibit incidental take of the Neuse River waterdog by destroying, altering, or degrading the habitat in the manner described above. Regulating incidental take associated with these activities will help preserve Neuse River waterdog populations, slow the rate of population decline, and decrease synergistic, negative effects from other stressors.

During both public comment periods, the Service received numerous comments on the exception for incidental take resulting from silvicultural practices and forest management activities (see Summary of Comments and Recommendations, above). North Carolina's forestry best management practices (BMPs), when properly implemented, protect water quality and help conserve aquatic species, including the Neuse River waterdog. Forest landowners who properly implement those BMPs are helping conserve the waterdog, and this 4(d) rule is an incentive for all landowners to properly implement them

to avoid any take implications. Further, those forest landowners who are third-party-certified to a credible forest management standard are providing audited certainty that BMP implementation is taking place across the landscape.

To address any uncertainty regarding which silvicultural and forest management BMPs will satisfy this exception for incidental take resulting from silvicultural practices and forest management activities, our regulations specify the conditions that must be met. We revised our section 4(d) language to clarify that the BMPs must result in protection of the habitat features that provide for the breeding, feeding, sheltering, and dispersal needs of the Neuse River waterdog, which will provide for the conservation of the species. In waterbodies that support listed aquatic species, a wider SMZ is more effective at reducing sedimentation, maintaining lower water temperatures through shading, and introducing food (such as leaves and insects) into the food chain (VADF 2011, p. 37). Ninety percent of the food in forested streams comes from bordering vegetation (NCWRC 2002, p. 6; USFWS 2006, p. 6; Stewart et al. 2000, p. 210; USFWS 2020ab, p. 10). Neuse River waterdogs require cool, well-oxygenated water, and a clean stream bottom (USFWS 2020ab, p. 10). A lack of these features limits the number of waterdogs a stream can support. Aquatic habitat and suitable water temperature can be maintained even during logging operations when streamside vegetation is left intact (VADF 2011, p. 37). The exception for incidental take associated with these activities seeks to ensure these characteristics are maintained for the conservation of the Neuse River waterdog.

Under this final 4(d) rule, all prohibitions and provisions of section 9(a)(1) of the Act apply to the Neuse River waterdog, except that incidental take resulting from the following actions will not be prohibited:

(1) Species restoration efforts by State wildlife agencies, including collection of broodstock, tissue collection for genetic analysis, captive propagation, and subsequent stocking into currently occupied and unoccupied areas within the historical range of the species, and follow-up monitoring.

(2) Channel restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers. These projects can be accomplished using a variety of

methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools composed of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands. Second- to third-order, headwater streams reconstructed in this way offer suitable habitats for the Neuse River waterdog and contain stable channel features, such as pools, glides, runs, and riffles, which could be used by the species for spawning, rearing, growth, feeding, migration, and other normal behaviors. Prior to restoration action, surveys to determine presence of Neuse River waterdog must be performed, and if located, waterdogs must be relocated prior to project implementation.

(3) Bank stabilization projects that use bioengineering methods to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. Following these bioengineering methods, stream banks may be stabilized using native species live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native species live fascines (live branch cuttings, usually willows, bound together into long, cigar shaped bundles), or native species brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Native species vegetation includes woody and herbaceous species appropriate for the region and habitat conditions. These methods will not include the sole use of quarried rock (rip-rap) or the use of rock baskets or gabion structures.

(4) Forestry-related activities, including silvicultural practices, forest management activities, and fire control tactics, that implement State-approved BMPs. In order for this exception to apply to forestry-related activities, these BMPs must achieve all of the following:

(a) Establish a streamside management zone alongside the margins of each waterway.

(b) Restrain visible sedimentation caused by the forestry-related activity from entering the waterway.

(c) Maintain native groundcover within the streamside management zone of the waterway, and promptly re-

establish native groundcover if disturbed.

(d) Limit installation of vehicle or equipment crossings of the waterway to only where necessary for the forestry-related activity. Such crossings must:

(i) Have erosion and sedimentation control measures installed to divert surface runoff away and restrain visible sediment from entering the waterway;

(ii) Allow for movement of aquatic organisms within the waterway; and

(iii) Have native groundcover applied and maintained through completion of the forestry-related activity.

(e) Prohibit the use of tracked or wheeled vehicles for reforestation site preparation within the streamside management zone of the waterway.

(f) Prohibit locating log decks, skid trails, new roads, and portable mill sites in the streamside management zone of the waterway.

(g) Prohibit obstruction and impediment of the flow of water within the waterway, caused by direct deposition of debris or soil by the forestry-related activity.

(h) Maintain shade over the waterway similar to that observed prior to the forestry-related activity.

(i) Prohibit discharge of any solid waste, petroleum, pesticide, fertilizer, or other chemical into the waterway.

We reiterate that these actions and activities may have some minimal level of take of the Neuse River waterdog, but are unlikely to negatively impact the species' conservation and recovery efforts. To the contrary, we expect they would have a net beneficial effect on the species. Across the species' range, instream habitats have been degraded physically by sedimentation and by direct channel disturbance. The activities in the 4(d) rule will correct some of these problems, creating more favorable habitat conditions for the species.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

The Service recognizes the special and unique relationship with our State

natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, candidate, and at-risk species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Service in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Service shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, will be able to conduct activities designed to conserve the Neuse River waterdog that may result in otherwise prohibited take without additional authorization.

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

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. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement "reasonable and prudent alternatives" to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the

species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the specific features that support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat that this rule follows (based on the May 22, 2019, publication date of the proposed rule), 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. We will determine whether unoccupied areas are essential for the conservation of the species by considering the life-history, status, and conservation needs of the species. This will be further informed by any generalized conservation strategy, criteria, or outline that may have been developed for the species to provide a substantive foundation for identifying which features and specific areas are essential to the conservation of the species and, as a result, the development of the critical habitat designation. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. Section 4 of the Act requires that we designate critical habitat based on 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 other information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) 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 (HCPs), or other species conservation planning efforts if new information available at

the time of these planning efforts calls for a different outcome.

On August 27, 2019, we published a final rule in the **Federal Register** (84 FR 45020) to amend our regulations concerning the procedures and criteria we use to designate and revise critical habitat. That rule became effective on September 26, 2019, but, as stated in under **DATES** in that rule, the amendments it sets forth apply to "rules for which a proposed rule was published after September 26, 2019." We published our proposed critical habitat designations for the Carolina madtom and Neuse River waterdog on May 22, 2019 (84 FR 23644); therefore, the amendments set forth in the August 27, 2019, final rule at 84 FR 45020 do not apply to this final designation of critical habitat for the Carolina madtom and Neuse River waterdog.

Prudency Determination

While the implementing regulations (50 CFR 424.12) of section 4(a)(3) of the Act, as amended, have recently been amended, the proposed rule that led to this final rule published before the new regulations were implemented; therefore, we are operating under the older implementing regulations that require that the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species to the maximum extent prudent and determinable. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or

(2) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Service may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of "critical habitat."

In our SSA report and the proposed listing determination for the Carolina madtom and Neuse River waterdog, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to both the Carolina madtom and Neuse River waterdog and that those threats in some way can be addressed by section 7(a)(2) consultation measures. Accordingly, such a designation could

be beneficial to the species. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) has been met and because there are no other circumstances the Secretary has identified for which this designation of critical habitat would be not prudent, we have determined that the designation of critical habitat is prudent for the Carolina madtom and the Neuse River waterdog.

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 Carolina madtom and Neuse River waterdog is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of "critical habitat."

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where both species are located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the Carolina madtom and Neuse River waterdog.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 were amended after the publication of the May 22, 2019, proposed rule; see 84 FR 45020 (August 27, 2019). For this rule, we define "physical or biological features essential to the conservation of the species" as the features that support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation,

symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of

habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Summary of Essential Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic needed to support the life history of the species. In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species.

We derive the specific physical or biological features essential to the conservation of Carolina madtom from studies of this species' habitat, ecology, and life history as described above. The primary habitat elements that influence resiliency of both species include water quality, water quantity, substrate, and habitat connectivity. Additional information can be found in the SSA report (Service 2021a) available on <http://www.regulations.gov> under Docket No. FWS-R4-ES-2018-0092. The Carolina madtom's individual needs are summarized below in Table 3.

TABLE 3—LIFE HISTORY AND RESOURCE NEEDS OF THE CAROLINA MADTOM

Life stage	Resources and/or circumstances needed for individuals to complete each life stage	Resource function (BFSD*)	Information source
Egg/Embryo—May–July	• Clear, flowing water • Sexually mature males and females. • Appropriate spawning temperatures. • Nest sites (rocks, bottles, shells, cobble). • Adequate flow for oxygenation.	B	—Burr et al. 1989, p. 75.
Hatchling—late summer	• Clear, flowing water • Cohesive schooling behavior to avoid predation	B, S	—Burr et al. 1989, p. 78.
Juveniles—2–3 years; >2.5 inches long.	• Clear, flowing water • Adequate food availability (midges, caddisflies, mayflies, etc.)	F, S	—Burr et al. 1989, p. 78.
Adults—3+ years—>4 inches long.	• Cover (shells, bottles, cans, tires, woody debris, etc.). • Clear, flowing water 1 to 3 feet deep • Appropriate substrate (leaf litter, sand, gravel, cobble) • Adequate food availability (midges, caddisflies, mayflies, etc.). • Cover (shells, bottles, cans, tires, woody debris, etc.).	F, S, D	—Burr et al. 1989, p. 63 —Midway et al. 2010, p. 326.

* B = breeding; F = feeding; S = sheltering; D = dispersal.

We have determined that the following physical or biological features are essential to the conservation of Carolina madtom:

(1) Suitable substrates and connected instream habitats, characterized by geomorphically stable stream channels and banks (*i.e.*, channels that maintain

lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation) with habitats that support a diversity of freshwater native fish (such as stable riffle-run-pool habitats that provide flow refuges consisting of silt-free gravel, small cobble, coarse

sand, and leaf litter substrates) as well as abundant cover used for nesting.

(2) Adequate flows, or a hydrologic flow regime (which includes the severity, frequency, duration, and seasonality of discharge over time), necessary to maintain instream habitats where the species is found and to

maintain connectivity of streams with the floodplain, allowing the exchange of nutrients and sediment for maintenance of the fish's habitat, food availability, and ample oxygenated flow for spawning and nesting habitat.

(3) Water quality (including, but not limited to, conductivity, hardness, turbidity, temperature, pH, ammonia, heavy metals, and chemical constituents) necessary to sustain

natural physiological processes for normal behavior, growth, and viability of all life stages.

(4) Aquatic macroinvertebrate prey items, which are typically dominated by larval midges, mayflies, caddisflies, dragonflies, and beetle larvae.

We derive the specific physical or biological features essential to the conservation of Neuse River waterdog from studies of this species' habitat,

ecology, and life history as described above. The primary habitat elements that influence resiliency of both species include water quality, water quantity, substrate, and habitat connectivity. Additional information can be found in the SSA report (Service 2021b) available on <http://www.regulations.gov> under Docket No. FWS-R4-ES-2018-0092. The Neuse River waterdog's individual needs are summarized below in Table 4.

TABLE 4—LIFE HISTORY AND RESOURCE NEEDS OF THE NEUSE RIVER WATERDOG

Life stage	Resources and/or circumstances needed for individuals to complete each life stage	Resource function (BFSD *)	Information source
Egg/Embryo—May–June	• Clean, flowing water with moderate current (~10–50 cm/sec) • Sexually mature males and females (~6 years old) • Appropriate spawning temperatures (8–22 °C) • Nest sites (large flat rocks with gravel bottoms) • Adequate flow for oxygenation (7–9 ppm DO)	B	—Pudney et al. 1985, p. 54. —Cooper and Ashton 1985, p. 5. —Braswell and Ashton 1985, p. 21. —Ashton 1985, p. 95.
Hatchling—late summer	• Clean, non-turbid, flowing water (~10–50 cm/sec) • Adequate food availability	B, S	—Cooper and Ashton 1985, p. 5.
Post-hatchling Larvae—1–2 inches long.	• Clean, flowing water (~10–50 cm/sec) • Adequate food availability (opportunistic feeding; primarily invertebrates)	F, S	—Ashton 1985, p. 95.
Juveniles—Up to 5.5–6.5 years; 2–4 inches long.	• Clean, flowing water (~10–50 cm/sec) • Adequate food availability (primarily invertebrates) • Cover (large rocks/boulders, outcrops, burrows) for retreat areas	F, S	—Ashton 1985, p. 95. —Braswell 2005, p. 867.
Adults—6–30+ years—5–9 inches long.	• Clean, flowing water deeper than 100 cm with flows 10–50 cm/sec. • Streams >15m wide • High dissolved oxygen (7–9 ppm) • Appropriate substrate (hard clay bottom with leaf litter, gravel, cobble) • Little to no siltation • Adequate food availability (aquatic and terrestrial invertebrates) • Cover (large rocks/boulders, outcrops, burrows) for retreat areas	F, S, D	—Braswell and Ashton 1985, pp. 13, 22, 28. —Ashton 1985, p. 95. —Braswell 2005, p. 868.

* B = Breeding, F = Feeding, S = Sheltering, D = Dispersal.

We have determined that the following physical or biological features are essential to the conservation of Neuse River waterdog:

(1) Suitable substrates and connected instream habitats, characterized by geomorphically stable stream channels and banks (*i.e.*, channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation) with habitats that support a diversity of native aquatic fauna (such as stable riffle-run-pool habitats that provide flow refuges consisting of silt-free gravel, small cobble, coarse sand, and leaf litter substrates) as well as abundant cover and burrows used for nesting.

(2) Adequate flows, or a hydrologic flow regime (which includes the severity, frequency, duration, and seasonality of discharge over time), necessary to maintain instream habitats

where the species is found and to maintain connectivity of streams with the floodplain, allowing the exchange of nutrients and sediment for maintenance of the waterdog's habitat, food availability, and ample oxygenated flow for spawning and nesting habitat.

(3) Water quality (including, but not limited to, conductivity, hardness, turbidity, temperature, pH, ammonia, heavy metals, and chemical constituents) necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages.

(4) Invertebrate and fish prey items, which are typically hellgrammites, crayfish, mayflies, earthworms, snails, beetles, centipedes, slugs, and small fish.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within

the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of the Carolina madtom and Neuse River waterdog may require special management considerations or protections to reduce the following threats: (1) Urbanization of the landscape, including (but not limited to) land conversion for urban and commercial use, infrastructure (roads, bridges, utilities), and urban water uses (water supply reservoirs, wastewater treatment, etc.); (2) nutrient pollution and sedimentation from agricultural activities that impact water quantity and quality; (3) significant alteration of water quality; (4) improper forest management or clearcuts in riparian areas; (5) culvert and pipe installation

that create barriers to movement; (6) impacts from invasive species; (7) changes and shifts in seasonal precipitation patterns as a result of climate change; and (8) other watershed and floodplain disturbances that release sediments or nutrients into the water.

Management activities that could ameliorate these threats include, but are not limited to: Use of BMPs designed to eliminate visible sedimentation, erosion, and bank side destruction; protection of riparian corridors and retention of sufficient canopy cover along banks; moderation of surface and ground water withdrawals to maintain natural flow regimes; increased use of stormwater management and reduction of stormwater flows into the systems; modernization of waste water treatment; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat.

The current distribution of both species is much reduced from their historical distributions. We anticipate that recovery will require continued protection of existing populations and habitat, as well as ensuring there are adequate numbers of Neuse River waterdogs and Carolina madtoms in stable populations and that these populations occur over a wide geographic area. This strategy will help to ensure that catastrophic events, such as the effects of hurricanes (*e.g.*, flooding that causes excessive sedimentation, nutrients, and debris to disrupt stream ecology), cannot simultaneously affect all known populations. Rangewide recovery considerations, such as maintaining existing genetic diversity and striving for representation of all major portions of the species' current range, were considered in formulating this critical habitat designation.

Sources of data for these critical habitat designations include multiple databases maintained by North Carolina (NC) State University, the NC Wildlife

Resources Commission, and the NC Natural Heritage Program, as well as numerous survey reports on streams throughout the species' range (see SSA reports). We have also reviewed available information that pertains to the habitat requirements of these species. Sources of information on habitat requirements include studies conducted at occupied sites and published in peer-reviewed articles, agency reports, and data collected during monitoring efforts (Service 2021ab).

Areas Occupied at the Time of Listing **Carolina Madtom**

We identified stream channels up to bankfull height that currently support populations of the Carolina madtom. We defined "current" as stream channels with observations of the species from 2010 to the present, as described in the SSA report and supported by the species' life history and habitat stability over time (Service 2021a, p. 10). Due to the breadth and intensity of survey effort done for freshwater fishes throughout the known range of the species, it is reasonable to assume that streams with no positive surveys since 2010 should not be considered occupied for the purpose of our analysis. However, this does not preclude the possibility of detecting the species in other locations upon subsequent surveys. For example, we received new data from the NCWRC indicating that one of the previously proposed unoccupied units (Contentnea Creek, Unit 6) has been confirmed to be occupied by the species.

Specific habitat areas were delineated based on Natural Heritage element occurrences (EOs) following NatureServe's occurrence delineation protocol for freshwater fish (NatureServe 2018). These EOs provide habitat for Carolina madtom subpopulations and are large enough to be self-sustaining over time, despite fluctuations in local conditions. The EOs contain stream reaches with interconnected waters so that fish can move between areas, at least during certain flows or seasons. In 2018, we learned that a live Carolina madtom was observed in Contentnea Creek, thus changing the occupancy of that stream to currently occupied.

We consider the following streams to be occupied by the species at the time of listing: Upper Tar, Fishing Creek, Sandy-Swift Creek, Contentnea Creek, and the Little River (see the unit descriptions under Final Critical Habitat Designation, below). The critical habitat designation does not include all streams

known to have been occupied by the species historically; instead, it includes only the occupied streams within the historical range that have also retained the physical or biological features that will allow for the maintenance and expansion of existing populations.

Neuse River Waterdog

We identified stream channels up to bankfull height that currently support populations of the Neuse River waterdog. As with the Carolina madtom, we defined "currently" as stream channels with observations of the species from 2010 to the present, as described in the SSA report and supported by the species' life history and habitat stability over time (Service 2021b, p. 14). Due to the breadth and intensity of survey effort done for amphibians throughout the known range of the species, it is reasonable to assume that streams with no positive surveys since 2010 should not be considered occupied for the purpose of our analysis. However, this does not preclude the possibility of detecting the species in other locations upon subsequent surveys.

Specific occupied habitat areas were delineated based on Natural Heritage EOs following NatureServe's occurrence delineation protocol for aquatic species (NatureServe 2018). These EOs provide habitat for Neuse River waterdog subpopulations and are large enough to be self-sustaining over time, despite fluctuations in local conditions. The EOs contain stream reaches with interconnected waters so that waterdogs can move between areas, at least during certain flows or seasons.

Based on this information, we consider the following subbasins to be currently occupied by the species at the time of listing: Upper, Middle, and Lower Tar River subbasins; Sandy-Swift Creek; Fishing Creek subbasin; Upper, Middle, and Lower Neuse River subbasins; and the Trent River (see the unit descriptions under Final Critical Habitat Designation, below). The critical habitat designation does not include all streams known to have been occupied by the species historically; instead, it includes only the occupied streams within the historical range that have also retained the physical or biological features that will allow for the maintenance and expansion of existing populations.

Areas Outside the Geographic Area Occupied at the Time of Listing

We are designating two currently unoccupied units for the Carolina madtom that we determined to be essential for the conservation of the

species. Carolina madtoms have been completely extirpated from the Trent River basin, three of the five Neuse River units, and two of the five Tar River basin management units. There are currently only two occupied management units remaining in the Neuse River basin, and those populations were found to be in “low” and “very low” condition in our resiliency analysis. Having at least three resilient populations in both the Tar and Neuse River basins and at least one resilient population in the Trent River basin is essential for the conservation of the Carolina madtom because the unoccupied unit in the Neuse will contribute to redundancy and resiliency of that population, and the unoccupied Trent unit will add resiliency, redundancy, and representation where there currently are none in that population through propagation and reintroduction. Accordingly, we are designating one unoccupied unit in the Trent River basin and one in the Neuse River basin. Because there are already three populations in the Tar River basin, we do not consider an unoccupied unit in this basin to be essential for the species’ conservation.

We are not designating any areas outside the geographical area currently occupied by the Neuse River waterdog because we did not find any unoccupied areas that were essential for the conservation of the species. The protection of the nine currently occupied MUs across the physiographic representation of the range will sufficiently reduce the risk of extinction, and by improving the resiliency of populations in these currently occupied streams, viability may increase to the point that the protections of the Act would no longer be necessary.

Critical Habitat Maps

Critical habitat for these aquatic species includes only stream channels up to bankfull height, where the stream base flow is contained within the channel. When determining critical habitat boundaries, we made every effort to avoid including developed

areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the Carolina madtom and Neuse River waterdog. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this rule have been excluded by text in the rule and are not included for designation as critical habitat.

Therefore, a Federal action involving these lands would not trigger section 7 consultation under the Act with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are designating as critical habitat lands that we have determined are occupied at the time of listing (*i.e.*, currently occupied) and that contain one or more of the physical or biological features that are essential to support life-history processes of the species. For the Carolina madtom, we have determined that both occupied and unoccupied areas are necessary to ensure the conservation of the species. Therefore, we have also identified and designated as critical habitat unoccupied areas that are essential for the conservation of the Carolina madtom.

Units are designated based on one or more of the physical or biological features being present to support Carolina madtom or Neuse River waterdog life-history processes. Some units contain all of the identified physical or biological features and support multiple life-history processes. Some units contain only some of the physical or biological features necessary to support the Carolina madtom’s or Neuse River waterdog’s particular use of that habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of

this document under Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the discussion of individual units below. We will make the coordinates or plot points or both on which each map is based available to the public at <http://www.regulations.gov> under Docket No. FWS-R4-ES-2018-0092, at <http://www.fws.gov/southeast>, and at the Raleigh Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**, above).

Final Critical Habitat Designation

Carolina Madtom

We are designating approximately 257 river miles (414 river kilometers) in 7 units in North Carolina as critical habitat for the Carolina madtom. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Carolina madtom. Five of the units are currently occupied by the species and contain some or all of the physical or biological features essential to the conservation of the species. Two of the units are unoccupied but are essential to the conservation of the species. All units may require special management considerations or protection to address habitat degradation resulting from the cumulative impacts of land use change and associated watershed-level effects on water quality, water quantity, habitat connectivity, and instream habitat suitability. These stressors are primarily related to habitat changes: The buildup of fine sediments, the loss of flowing water, instream habitat fragmentation, and impairment of water quality; these are all exacerbated by climate change. Table 5 shows the name, land ownership of the riparian areas surrounding the units, and approximate river miles of the designated units for the Carolina madtom. Since all streambeds are navigable waters, the actual critical habitat units are all owned by the State of North Carolina.

TABLE 5—CRITICAL HABITAT UNITS FOR THE CAROLINA MADTOM

Critical habitat unit	Occupied at the time of listing	Riparian ownership	Length of unit in river miles (kilometers)
Unit 1. TAR1—Upper Tar River	Yes	Private	26 (42)
Unit 2. TAR2—Sandy/Swift Creek	Yes	Private; Easements	66 (106)
Unit 3. TAR3—Fishing Creek Subbasin	Yes	Private; Easements; State	86 (138)
Unit 4. NR1—Upper Neuse River Subbasin (Eno River)	No	Easements; State; Private	20 (32)
Unit 5. NR2—Little River	Yes	Private; Easements	28 (45)
Unit 6. NR3—Contentnea Creek	Yes	Private	15 (24)

TABLE 5—CRITICAL HABITAT UNITS FOR THE CAROLINA MADTOM—Continued

Critical habitat unit	Occupied at the time of listing	Riparian ownership	Length of unit in river miles (kilometers)
Unit 7. TR1—Trent River	No	Private	15 (24)
Total .....	.....	.....	257 (414)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Carolina madtom, below.

Tar Population

Unit 1: TAR1—Upper Tar River

Unit 1 consists of 26 mi (42 km) of the Upper Tar River, from the confluence with Sand Creek to the confluence with Sycamore Creek, in Granville, Vance, and Franklin Counties. Unit 1 is occupied by the species and contains all of the physical or biological features essential to the conservation of the species. The riparian land adjacent to the river is entirely privately owned.

Special management considerations or protection may be required within this unit to address a variety of threats. Excessive amounts of nitrogen and phosphorus run off the land, or are discharged, into the waters, causing excessive growth of vegetation and leading to extremely low levels of dissolved oxygen. Based on 2014 data, seven stream reaches totaling approximately 38 miles (61.1 km) are “impaired” (as identified on the State’s Clean Water Act section 303d list) in this basin. Indicators of impairment are low dissolved oxygen and low benthic-macroinvertebrate assessment scores, and the entire basin is classified as Nutrient Sensitive Waters (NCDEQ 2016, pp. 115–117). There are 102 non-major NPDES discharges, including several package wastewater treatment plants (WWTPs) and biosolids facilities, and 3 major NPDES discharges (Oxford WWTP, Louisburg WWTP, and Franklin County WWTP) in this unit; with expansion of these facilities, or addition of new wastewater discharges, an additional threat to habitat exists in this unit. Special management focused on agricultural and forestry BMPs, implementing highest levels of wastewater treatment practicable, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Unit 2: TAR2—Sandy/Swift Creek

Unit 2 consists of 66 mi (106 km) of Sandy and Swift Creeks, located

downstream from NC561 to the confluence with the Tar River, in Edgecombe, Vance, Warren, Halifax, Franklin, and Nash Counties. This unit is occupied and contains all of the physical or biological features essential to the conservation of the species. The riparian land adjacent to this unit is predominantly privately owned (96 percent), with some conservation parcels (2 percent) and State Game Lands (2 percent).

Special management considerations or protection may be required within this unit to address a variety of threats. Excessive amounts of nitrogen and phosphorus run off the land, or are discharged, into the waters, causing excessive growth of vegetation and leading to extremely low levels of dissolved oxygen; one stream reach totaling approximately 5 miles (8 km) is impaired in this unit. Special management focused on agricultural and forestry BMPs, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Unit 3: TAR3—Fishing Creek Subbasin

Unit 3 consists of approximately 86 mi (138 km), including Fishing Creek from the confluence with Hoppen Branch to the confluence with the Tar River, and Little Fishing Creek from Medoc Mountain Road (SR1002) to the confluence with Fishing Creek, located in Edgecombe, Warren, Halifax, Franklin, and Nash Counties. This unit is occupied by the species and contains all of the physical or biological features essential to the conservation of the species. The riparian land adjacent to the unit is divided between privately owned parcels (89 percent), State Game Lands and State Park land (5 percent), and conservation parcels (6 percent).

Special management considerations or protection may be required within this unit to address a variety of threats. Excessive amounts of nitrogen and phosphorus run off the land, or are discharged, into the waters, causing excessive growth of vegetation and leading to extremely low levels of dissolved oxygen. Special management focused on agricultural and forestry

BMPs, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Neuse River Population

Unit 4: NR1—Upper Neuse River Subbasin (Eno River)

Unit 4 consists of approximately 20 mi (32 km) of the Upper Neuse River extending from Eno River State Park downstream of NC70 to the confluence with Cabin Creek near Falls Lake impoundment, located in Orange and Durham Counties. This unit is not occupied by the species.

There is one historical record of Carolina madtoms in this unit from 1961, but follow-up surveys in 2011 were not able to find any individuals. Although it is unoccupied, it does contain all of the physical or biological features essential for the conservation of the species. This unit is itself essential for the conservation of the species because it will provide for population expansion through propagation and reintroduction efforts, and will provide for resiliency in portions of known historical habitat that is necessary to increase the viability (resiliency, redundancy, and representation) of the species. Riparian land adjacent to the unit is almost entirely (79 percent) within State Park Lands, local government conservation parcels, and State Game Lands.

Unit 5: NR2—Little River

Unit 5 consists of 28 mi (45 km) of the Upper and Lower Little River from NC42 to Johnston/Wayne County line, located in Johnston County. This unit is occupied and contains all of the physical or biological features essential for the conservation of the species. The riparian land adjacent to the unit is predominantly privately owned (99 percent) with some (1 percent) State Conservation ownership.

Special management considerations or protection may be required within this unit to address a variety of threats. Four stream reaches totaling approximately 17 miles are impaired in the Little River. The designation of impairment is based primarily on low

benthic-macroinvertebrate assessment scores, low pH, and low dissolved oxygen. There are 32 non-major and no major NPDES discharges in this unit. Special management considerations in this unit include retrofitting stormwater systems, eliminating direct stormwater discharges, increasing and protecting existing open space, and maintaining connected riparian corridors.

Unit 6: NR3—Contentnea Creek

Unit 6 consists of approximately 15 mi (24 km) of Contentnea Creek from Buckhorn Reservoir to Wiggins Mill Reservoir, located in Wilson County. This unit is occupied by the species, and contains all of the physical or biological features essential for the conservation of the species. The riparian land adjacent to this unit is entirely privately owned.

Special management considerations or protection may be required within this unit to address a variety of threats. Two stream reaches totaling approximately 21 miles are impaired in Contentnea Creek. The designation of impairment is based primarily on low benthic-macroinvertebrate assessment scores. There are 3 major and 77 non-

major NPDES discharges in this unit. Special management considerations in this unit include retrofitting stormwater systems, eliminating direct stormwater discharges, increasing and protecting existing open space, and maintaining connected riparian corridors.

Trent Population

Unit 7: TR1—Trent River

Unit 7 consists of approximately 15 mi (24 km) of the Trent River between the confluence with Cypress Creek and Beaver Creek, in Jones County. This unit is unoccupied by the species. The last known documentation of the species here was in 1986. Although it is unoccupied, this unit does contain all of the physical or biological features essential for the conservation of the species. This unit itself is essential for the conservation of the species because it will provide for population expansion through propagation and reintroduction, and will provide for resiliency in portions of known historical habitat that is necessary to increase the viability (resiliency, redundancy, and representation) of the species. All of the riparian land adjacent to this unit is privately owned.

Neuse River Waterdog

We are designating approximately 779 miles (1,254 kilometers) in 18 units in North Carolina as critical habitat for the Neuse River waterdog. The critical habitat areas described below constitute our current best assessment of areas that meet the definition of critical habitat, and all units are considered currently occupied by the species. Those 18 units are: (1) Upper Tar River, (2) Upper Fishing Creek, (3) Bens Creek, (4) Fishing Creek Subbasin, (5) Sandy/Swift Creek, (6) Middle Tar River Subbasin, (7) Lower Tar River Subbasin, (8) Eno River, (9) Flat River, (10) Middle Creek, (11) Swift Creek, (12) Little River, (13) Mill Creek, (14) Middle Neuse River, (15) Contentnea Creek/Lower Neuse River Subbasin, (16) Swift Creek (Lower Neuse), (17) Trent River, and (18) Tuckahoe Swamp. Table 6 shows the name, land ownership of the riparian areas surrounding the units, and approximate river miles of the designated units for the Neuse River waterdog. Where appropriate, Table 6 also notes the previous number for units for which the numbering has changed.

TABLE 6—CRITICAL HABITAT UNITS FOR THE NEUSE RIVER WATERDOG

[All units are occupied]

Critical habitat unit	Riparian ownership	River miles (Kilometers)	Previous unit numbering
Unit 1. TAR1—Upper Tar River	Private; Easements	12.3 (19.8)	Unit 1: TAR1.
Unit 2. TAR2—Upper Fishing Creek	Private; Easements	10.5 (17)	Unit 2: TAR2.
Unit 3. TAR3—Bens Creek	Private	2 (3.2)	New Unit.
Unit 4. TAR4a—Fishing Creek Subbasin	Private; Easements; State	82.8 (133.3)	Unit 3: TAR3a.
Unit 5. TAR4b—Sandy/Swift Creek	Private; Easements; State	72.5 (116.8)	Unit 4: TAR3b.
Unit 6. TAR4c—Middle Tar River Subbasin	Private; Easements; State	111 (179)	Unit 5: TAR3c.
Unit 7. TAR4d—Lower Tar River Subbasin	Private; Easements; State	59.9 (96.3)	Unit 6: TAR3d.
Unit 8. NR1—Eno River	Private; Easements; State	43.9 (70.6)	Unit 7: NR1.
Unit 9. NR2—Flat River	Private; Easements	15.2 (24.5)	Unit 8: NR2.
Unit 10. NR3—Middle Creek	Private; Easements; Local	30.8 (49.6)	Unit 9: NR3.
Unit 11. NR4—Swift Creek	Private	24 (38.6)	Unit 10: NR4.
Unit 12. NR5a—Little River	Private; Easements	90.8 (146.1)	Unit 11: NR5a.
Unit 13. NR5b—Mill Creek	Private; Easements	20.8 (33.5)	Unit 12: NR5b.
Unit 14. NR5c—Middle Neuse River	Private; State; Easements	43.2 (69.5)	Unit 13: NR5c.
Unit 15. NR6—Contentnea Creek/Lower Neuse River Subbasin.	Private; Easements	114.8 (184.8)	Unit 14: NR6.
Unit 16. NR7—Swift Creek (Lower Neuse)	Private; Easements	10.3 (16.5)	Unit 15: NR7.
Unit 17. TR1—Trent River	Private	32.5 (52.4)	Unit 16: TR1.
Unit 18. TR2—Tuckahoe Swamp	Private	2 (3.2)	New Unit.
Total .....	.....	779 (1,254)	

Note: Distances may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for Neuse River waterdog, below.

Tar Population

Unit 1: TAR1—Upper Tar River

Unit 1 consists of 12.3 miles (19.8 km) of the Tar River in Granville County from approximately SR1004 (Old NC 75) downstream to SR1622 (Cannady's Mill Road). We revised Unit 1 to add 3.7

miles (6 km) of the Upper Tar River based on a 2018 observation of Neuse River waterdog provided by NCWRC. The riparian land adjacent to this unit is primarily privately owned (80 percent), with several conservation parcels or easements (20 percent). The unit contains all of the physical or

biological features essential for the conservation of the species.

Special management considerations or protection may be required within this unit to address a variety of threats. Excessive amounts of nitrogen and phosphorus run off the land, or are discharged, into the waters, causing excessive growth of vegetation and leading to extremely low levels of dissolved oxygen. Based on 2014 data, seven stream reaches totaling approximately 38 miles (61.1 km) are impaired in this basin. Indicators of impairment are low dissolved oxygen and low benthic-macroinvertebrate assessment scores, and the entire basin is classified as Nutrient Sensitive Waters (NCDEQ 2016, pp. 115–117). There are 102 non-major NPDES discharges, including several package WWTPs and biosolids facilities, and 3 major NPDES discharges (Oxford WWTP, Louisburg WWTP, and Franklin County WWTP) in this unit; with expansion of these facilities, or addition of new wastewater discharges, an additional threat to habitat exists in this unit. Special management focused on agricultural and forestry BMPs, implementing highest levels of wastewater treatment practicable, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Unit 2: TAR2—Upper Fishing Creek

Unit 2 consists of 10.5 mi (16.9 km) of Upper Fishing Creek in Warren County. This unit extends from SR1118 (No Bottom Drive) downstream to NC58. The riparian land adjacent to the unit is primarily privately owned (94 percent) with several conservation parcels or easements (6 percent). This unit contains all of the physical or biological features essential for the conservation of the species.

Special management considerations or protection may be required within this unit to address a variety of threats. Excessive amounts of nitrogen and phosphorus run off the land or are discharged into the waters, causing excessive growth of microscopic or macroscopic vegetation and leading to extremely low levels of dissolved oxygen. Special management focused on agricultural and forestry BMPs, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Unit 3: TAR3—Bens Creek

Unit 3 consists of 2 miles (3.2 km) of Bens Creek in Warren County, North Carolina. The designated area begins

approximately one mile upstream and ends approximately one mile downstream of SR1509 (Odell-Littleton Road). The addition of this unit is based on a 2019 observation of Neuse River waterdog provided by NCWRC. The riparian areas on either side of the river are privately owned. The unit contains all of the physical or biological features essential for the conservation of the species.

Special management considerations or protection may be required to address excess sediment and pollutants that enter the creek and serve as indicators of other forms of pollution such as bacteria and toxins, reducing water quality for the species. Sources of these types of sediment and pollution are likely agricultural and silvicultural runoff. Special management focused on agricultural and forestry BMPs, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Unit 4: TAR4a—Fishing Creek Subbasin

Revised Unit 4 consists of 82.8 miles (133.3 km) of lower Little Fishing Creek approximately 1.6 miles (2.6 km) upstream of SR1214 (Silvertown Rd) downstream to the confluence with Fishing Creek, and including the mainstem of Fishing Creek from the Warren/Halifax County line to the confluence with the Tar River in Edgecombe County. The revision of Unit 4 (previously Unit 3) adds 20 miles (32.3 km) of Fishing Creek based on a 2019 observation of Neuse River waterdog provided by NCWRC. The riparian land adjacent to the unit includes private land (86 percent), several conservation parcels (6 percent), and State game lands (8 percent). The unit contains all of the physical or biological features essential for the conservation of the species.

Special management considerations or protection may be required within this unit to address a variety of threats. Excessive amounts of nitrogen and phosphorus run off the land, or are discharged, into the waters, causing excessive growth of vegetation and leading to extremely low levels of dissolved oxygen. Special management focused on agricultural and forestry BMPs, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Unit 5: TAR4b—Sandy/Swift Creek

Unit 5 consists of an approximately 72.5 mi (116.8 km) segment of Sandy Creek downstream of SR 1451 (Leonard Road) to the confluence with the Tar

River, including Red Bud Creek downstream of the Franklin/Nash county line to the confluence with Swift Creek. This unit is located in Warren, Franklin, Nash, and Edgecombe Counties. The riparian land adjacent to this unit includes private lands (97 percent), conservation parcels (1 percent), and State Game Lands (2 percent). This unit contains all of the physical or biological features essential for the conservation of the species.

Special management considerations or protection may be required within this unit to address a variety of threats. Excessive amounts of nitrogen and phosphorus run off the land or are discharged into the waters, causing excessive growth of microscopic or macroscopic vegetation and leading to extremely low levels of dissolved oxygen; there is one “impaired” stream reach totaling approximately 5 miles (8 km) in this unit. Special management focused on agricultural and forestry BMPs, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Unit 6: TAR4c—Middle Tar River Subbasin

Revised Unit 6 (previously Unit 5) consists of 111 miles (179 km) of the Middle Tar River from upstream of Highway 401 downstream to the confluence with Fishing Creek, including Stony Creek below SR1300 (Boddies’ Millpond Rd), downstream to the confluence with the Tar River. This unit is located in Franklin, Nash, and Edgecombe Counties. We revised Unit 6 (previously Unit 5) to add 11 miles (17.8 km) of the upper reach of the Tar River based on a 2019 observation of Neuse River waterdog provided by a permitted private consultant. The riparian land adjacent to this unit is nearly all private lands (99 percent), with less than 1 percent conservation parcels, local parks, and a research station. The unit contains all of the physical or biological features essential for the conservation of the species.

Special management considerations or protection may be required within this unit to address a variety of threats. Excessive amounts of nitrogen and phosphorus run off the land or are discharged into the waters, causing too much growth of microscopic or macroscopic vegetation and leading to extremely low levels of dissolved oxygen. As a result, there are six impaired stream reaches totaling approximately 32 miles in the unit. Expansion or addition of new wastewater discharges are also a threat to habitat in this unit. Special

management focused on use of agricultural and forestry BMPs, implementation of highest levels of treatment of wastewater practicable, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Unit 7: TAR4d—Lower Tar River Subbasin

Unit 7 consists of approximately 59.9 mi (96.3 km) in the Lower Tar River Subbasin from the confluence with Fishing Creek downstream to the confluence with Barber Creek near SR1533 (Port Terminal Road). This includes portions of Town Creek below NC111 to the confluence with the Tar River, Otter Creek below SR1251 to the confluence with the Tar River, and Tyson Creek below SR1258 to the confluence with the Tar River. This unit is located in Edgecombe and Pitt Counties. The riparian land adjacent to this unit consists of private land (97 percent), conservation parcels (2.5 percent), and State Game Lands (0.5 percent). This unit contains all of the physical or biological features essential for the conservation of the species.

Special management considerations or protection may be required to address excess sediment and pollutants that enter the creek and serve as indicators of other forms of pollution such as bacteria and toxins, reducing water quality for the species. Special management focused on use of agricultural and forestry BMPs, implementation of highest levels of treatment of wastewater practicable, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Neuse Population

Unit 8: NR1—Eno River

Unit 8 consists of approximately 43.9 mi (70.6 km) of the Eno River from NC86 downstream to the inundated portion of Falls Lake in Orange and Durham Counties. The riparian land adjacent to this unit includes private lands (61 percent), State Park Lands (25 percent), local government conservation parcels (12 percent), and State Game Lands (2 percent). This unit contains all of the physical or biological features essential for the conservation of the species.

Special management considerations or protection may be required within this unit to address a variety of threats. Large quantities of nutrients (especially nitrogen) contributed by fertilizers and animal waste washed from lawns, urban

developed areas, farm fields, and animal operations are impacting aquatic ecosystems in this unit. More than 300 permitted point-source sites discharge wastewater into streams and rivers in the basin. Development is also impacting areas along the Upper Neuse River. Special management considerations in this unit include using the highest available wastewater treatment technologies, retrofitting stormwater systems, eliminating direct stormwater discharges, increasing open space, maintaining connected riparian corridors, and treating invasive species (like hydrilla).

Unit 9: NR2—Flat River

Unit 9 is a 15.2-mi (24.5-km) segment of the Flat River from SR1739 (Harris Mill Road) downstream to the inundated portion of Falls Lake, located in Person and Durham Counties. The riparian land adjacent to this unit consists of some private land (49 percent) and extensive conservation parcels (51 percent), including demonstration forest, recreation areas, and State Game Lands. This unit contains all of the physical or biological features essential for the conservation of the species.

Special management considerations or protection may be required within this unit to address a variety of threats. Large quantities of nutrients (especially nitrogen) contributed by fertilizers and animal waste washed from lawns, urban developed areas, farm fields, and animal operations are impacting aquatic ecosystems in this unit. Permitted point-source sites discharge wastewater into streams and rivers in the basin. Development is also impacting areas in the Upper Neuse River basin, including the Flat River. Special management considerations in this unit include using the highest available wastewater treatment technologies, retrofitting stormwater systems, eliminating direct stormwater discharges, increasing open space, maintaining connected riparian corridors, and treating invasive species (like hydrilla).

Unit 10: NR3—Middle Creek

Revised Unit 10 consists of 30.8 miles (49.6 km) of Middle Creek from Southeast Regional Park downstream to the confluence with Swift Creek in Wake and Johnston Counties, North Carolina. We revised Unit 10 to add 23.2 miles (37.4 km) of Middle Creek based on two 2018 observations of Neuse River waterdog provided by NCWRC. The riparian land adjacent to this unit is predominantly privately owned (91 percent) with a few conservation parcels, including the local park (9

percent). The unit contains all of the physical or biological features essential for the conservation of the species.

Special management considerations or protection may be required within this unit to address a variety of threats. Large quantities of nutrients (especially nitrogen) contributed by fertilizers and animal waste washed from lawns, urban developed areas, and farm fields are impacting aquatic ecosystems in this unit. Several hundred permitted point-source sites discharge wastewater into streams and rivers in the basin. Development is also impacting areas in Middle Creek. Special management focused on use of agricultural and forestry BMPs, implementation of highest levels of treatment of wastewater practicable, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Unit 11: NR4—Swift Creek

Unit 11 is a 24-mi (38.6-km) stretch of Swift Creek from NC42 downstream to the confluence with the Neuse River, located in Johnston County. The riparian land adjacent to this unit is entirely privately owned. This unit contains all of the physical or biological features essential for the conservation of the species.

Special management considerations or protection may be required within this unit to address a variety of threats. Large quantities of nutrients (especially nitrogen) contributed by fertilizers and animal waste washed from lawns, urban developed areas, farm fields, and animal operations are impacting aquatic ecosystems in this unit. Several hundred permitted point-source sites discharge wastewater into streams and rivers in the basin. Development is also impacting areas throughout Swift Creek. Special management considerations in this unit include using the highest available wastewater treatment technologies, retrofitting stormwater systems, eliminating direct stormwater discharges, increasing open space, and maintaining connected riparian corridors.

Unit 12: NR5a—Little River

Unit 12 is a 90.8-mi (146.1-km) segment of the Little River from near NC96 downstream to the confluence with the Neuse River, including Buffalo Creek from NC39 to the confluence with Little River, located in Franklin, Wake, Johnston, and Wayne Counties. The riparian land adjacent to this unit is predominantly privately owned (90 percent) with some (10 percent) local municipal conservation parcels (Little River Reservoir). This unit contains all

of the physical or biological features essential for the conservation of the species.

Special management considerations or protection may be required within this unit to address a variety of threats. Four stream reaches totaling approximately 17 miles are impaired in the Little River. The designation of impairment is based primarily on low benthic-macroinvertebrate assessment scores, low pH, and low dissolved oxygen. There are 32 non-major and no major NPDES discharges in this unit. Special management considerations in this unit include retrofitting stormwater systems, eliminating direct stormwater discharges, increasing and protecting existing open space, and maintaining connected riparian corridors.

Unit 13: NR5b—Mill Creek

Unit 13 is a 20.8-mi (33.5-km) segment of Mill Creek from upstream of US701 downstream to the confluence with the Neuse River located in Johnston and Wayne Counties. The riparian land adjacent to this unit is predominantly privately owned (95 percent) with some conservation parcels (5 percent). This unit contains all of the physical or biological features essential for the conservation of the species.

Special management considerations or protection may be required to address excess sediment and pollutants that enter the creek and serve as indicators of other forms of pollution such as bacteria and toxins, reducing water quality for the species. Special management focused on use of agricultural and forestry BMPs, implementation of highest levels of treatment of wastewater practicable, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Unit 14: NR5c—Middle Neuse River

Unit 14 is a 43.2-mi (69.5-km) segment of the Middle Neuse River from the confluence with Mill Creek downstream to the Wayne/Lenoir County line, located in Wayne County. The riparian land adjacent to this unit includes privately owned land (92 percent), conservation parcels (0.95 percent), State Park land (7 percent), and the Seymour Johnson Air Force Base (0.05 percent). The 2 miles of river segment located on the land owned by the Air Force Base is exempt from critical habitat under section 4(a)(3) of the Act (see Exemptions, below). This unit contains all of the physical or biological features essential for the conservation of the species.

Special management considerations or protection may be required within this unit to address a variety of threats. Large quantities of nutrients (especially nitrogen) contributed by fertilizers and animal waste washed from lawns, urban developed areas, farm fields, and animal operations are impacting aquatic ecosystems in this unit. More than 300 permitted point-source sites discharge wastewater into streams and rivers in the basin. Development is also impacting areas along the Middle Neuse River. Special management focused on use of agricultural and forestry BMPs, implementation of highest levels of treatment of wastewater practicable, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Unit 15: NR6—Contentnea Creek/Lower Neuse River Subbasin

Unit 15 is an approximately 114.8-mi (184.8-km) reach, including Contentnea Creek from NC581 downstream to its confluence with the Neuse River, Nahunta Swamp from the Wayne/Greene County line to the confluence with Contentnea Creek, and the Neuse River from the confluence with Contentnea Creek to the confluence with Pinetree Creek, located in Greene, Wilson, Wayne, Lenoir, Pitt, and Craven Counties. The riparian land adjacent to this unit is nearly all privately owned land (99 percent), with <1 percent conservation parcels. This unit contains all of the physical or biological features essential for the conservation of the species.

Special management considerations or protection may be required within this unit to address a variety of threats. Two stream reaches totaling approximately 21 miles are impaired in Contentnea Creek, with 55 impaired stream miles in the entire unit. The designation of impairment is based primarily on low benthic-macroinvertebrate assessment scores, low pH, and low dissolved oxygen. There are 9 major and 195 non-major NPDES discharges in this unit. Special management considerations in this unit include retrofitting stormwater systems, eliminating direct stormwater discharges, increasing and protecting existing open space, and maintaining connected riparian corridors.

Unit 16: NR7—Swift Creek (Lower Neuse)

Unit 16 is a 10.3-mi (16.5-km) reach of Swift Creek from SR1931 (Beaver Camp Rd) downstream to SR1440 (Streets Ferry Rd) located in Craven County. The riparian land adjacent to

this unit is nearly all privately owned (99 percent) with some conservation parcels (1 percent). This unit contains all of the physical or biological features essential for the conservation of the species.

Special management considerations or protection may be required to address excess sediment and pollutants that enter the creek and serve as indicators of other forms of pollution such as bacteria and toxins, reducing water quality for the species. Special management focused on use of agricultural and forestry BMPs, implementation of highest levels of treatment of wastewater practicable, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Trent Population

Unit 17: TR1—Trent River

Revised Unit 17 consists of 32.5 miles (52.4 km) of Beaver Creek from SR1316 (McDaniel Fork Rd) to the confluence with the Trent River, and Trent River from the confluence with Poplar Branch downstream to the SR1121 (Oak Grove Rd) crossing at the Marine Corps Cherry Point property, in Jones County. This unit was decreased to not include land owned by the Marine Corps at its Air Station (MCAS) Cherry Point Oak Grove Outlying Landing Field. The base's integrated natural resources management plan (INRMP) includes implementing ecosystem management practices that support the conservation and management of at-risk herpetofauna species, including Neuse River waterdog, known to occur at MCAS Cherry Point (Tetra Tech 2012, p. C–10). The riparian land adjacent to this unit is privately owned. This unit contains all of the physical or biological features essential for the conservation of the species.

Special management considerations or protection may be required to address excess sediment and pollutants that enter the river and serve as indicators of other forms of pollution such as bacteria and toxins, reducing water quality for the species. Special management focused on use of agricultural and forestry BMPs, implementation of highest levels of treatment of wastewater practicable, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Unit 18: TR2—Tuckahoe Swamp

Unit 18 consists of 2 miles (3.2 km) of Tuckahoe Swamp in Jones County, North Carolina. The designated area

begins upstream of SR1142 (Weyerhaeuser Road) to the confluence with the Trent River. The riparian areas on either side of the river are privately owned. This unit contains all of the physical or biological features essential for the conservation of the species.

Special management considerations or protection may be required to address excess sediment and pollutants that enter the river and serve as indicators of other forms of pollution such as bacteria and toxins, reducing water quality for the species. Special management focused on use of agricultural and forestry BMPs, implementation of highest levels of treatment of wastewater practicable, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

As a result of section 7 consultation, we generally document compliance

with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat.

We define “reasonable and prudent alternatives” (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency’s legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director’s opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinstate consultation on previously reviewed actions in several instances, including where we have listed a new species or subsequently designated critical habitat that may be affected, and the Federal agency has retained discretionary involvement or control over the action (or the agency’s discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinstitution of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the “Adverse Modification” Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that result in a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of the Carolina madtom or Neuse River waterdog. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Service may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would alter the minimum flow or the existing flow regime. Such activities could include, but are not limited to, impoundment, channelization, water diversion, water withdrawal, and hydropower generation. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the Carolina madtom and Neuse River waterdog by decreasing or altering flows to levels that would adversely affect the species’ abilities to complete their life cycles.

(2) Actions that would significantly alter water chemistry or temperature. Such activities could include, but are not limited to, release of chemicals (including pharmaceuticals, metals, and salts), biological pollutants, or heated effluents into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions to levels that are beyond the tolerances of Carolina madtoms and Neuse River waterdogs and result in direct or cumulative adverse effects to these individuals and their life cycles.

(3) Actions that would significantly increase sediment deposition within the stream channel. Such activities could

include, but are not limited to, excessive sedimentation from livestock grazing, road construction, channel alteration, incompatible forestry activities, off-road vehicle use, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the Carolina madtom and Neuse River waterdog by increasing the sediment deposition to levels that would adversely affect the species' abilities to complete their life cycles.

(4) Actions that would significantly increase the filamentous algal community within the stream channel. Such activities could include, but are not limited to, release of nutrients into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities can result in excessive filamentous algae filling streams and reducing habitat for the Carolina madtom and Neuse River waterdog, degrading water quality during algal decay, and decreasing oxygen levels at night from algal respiration to levels below the tolerances of the fish or amphibian.

(5) Actions that would significantly alter channel morphology or geometry. Such activities could include, but are not limited to, channelization, impoundment, road and bridge construction, mining, dredging, and destruction of riparian vegetation. These activities may lead to changes in water flows and levels that would degrade or eliminate the Carolina madtom and Neuse River waterdog and/or their habitats. These actions can also lead to increased sedimentation and degradation in water quality to levels that are beyond the tolerances of the Carolina madtom or Neuse River waterdog.

(6) Actions that result in the introduction, spread, or augmentation of nonnative aquatic species in occupied stream segments, or in stream segments that are hydrologically connected to occupied stream segments, even if those segments are occasionally intermittent, or introduction of other species that compete with or prey on the Carolina madtom or Neuse River waterdog. Possible actions could include, but are not limited to, stocking of nonnative fishes or other related actions. These activities can introduce parasites or disease to fish and amphibians; result in direct predation; or affect the growth, reproduction, and survival of madtoms and waterdogs.

Finally, we note that for any of the six categories of actions outlined above, we and the relevant Federal agency may find that the agency's anticipated

actions affecting critical habitat may be appropriate to consider programmatically in section 7 consultation. Programmatic consultations can be an efficient method for streamlining the consultation process, addressing an agency's multiple similar, frequently occurring, or routine actions expected to be implemented in a given geographic area. Programmatic section 7 consultation can also be conducted for an agency's proposed program, plan, policy, or regulation that provides a framework for future proposed actions. We are committed to responding to any agency's request for a programmatic consultation, when appropriate and subject to the approval of the Service Director, as a means to streamline the regulatory process and avoid time-consuming and inefficient multiple individual consultations.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- (1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- (2) A statement of goals and priorities;
- (3) A detailed description of management actions to be implemented to provide for these ecological needs; and
- (4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or

other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the ranges of the critical habitat designations for the Carolina madtom and Neuse River waterdog to determine if they meet the criteria for exemption from critical habitat under section 4(a)(3) of the Act. The following areas are Department of Defense (DoD) lands with completed, Service-approved INRMPs within the critical habitat designation for the Neuse River waterdog.

Approved INRMPs

We identified two areas within the critical habitat designation that consists of DoD lands with a completed, Service-approved INRMP. They are the Seymour Johnson Air Force Base (SJAFFB), which is located on 3,220 acres in Goldsboro, North Carolina, and the Marine Corps Air Station Cherry Point Oak Grove Outlying Landing Field (MCAS Cherry Point OLF), which is located near Pollocksville, in Jones County, North Carolina.

SJAFFB is federally owned land that is managed by the Air Force and is subject to all Federal laws and regulations. The SJAFFB INRMP was updated in September 2020, covers fiscal years 2021–2026, and serves as the principal management plan governing all natural resource activities on the installation. Among the goals and objectives listed in the INRMP is prohibiting the introduction of exotic species, the preparation of a fish and wildlife management plan, the enforcement of game laws, the conservation of wildlife and migratory waterfowl, licenses and permits, regulating the use of chemical toxicants for controlling nuisance species, the protection of endangered and threatened species, and allowing public access to military property.

Management actions that benefit the Neuse River waterdog include: Analyze the adequacy of existing stormwater facilities and BMPs; collect effluent data from each drainage basin within the context of an ecosystem goal for surface and ground water discharges from SJAFFB to make it easier to evaluate the scientific, ecological, and economic value of current and proposed BMPs;

collect seasonal and annual data concerning stormwater runoff and nonpoint source pollution to evaluate the contribution and water quality of stormwater runoff from SJAFB to the surrounding watersheds; address watershed protection and enhancement of water quality, and regulate the amounts of water used in future landscaping and grounds maintenance activities, including the use of herbicides, pesticides, and fertilizers; and apply appropriate stormwater management practices.

Two miles (3.2 km) of Unit 14 (NR5c—Middle Neuse River) for the Neuse River waterdog are located within the area covered by this INRMP. Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified streams are subject to the SJAFB INRMP and that conservation efforts identified in the INRMP will provide a benefit to the Neuse River waterdog. Therefore, streams within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 2 river mi (3.2 km) of habitat in the Neuse River waterdog's critical habitat designation because of this exemption.

For the MCAS Cherry Point OLF, Unit 17 (Trent River) was decreased to exempt land owned by the Marine Corps. The base's INRMP includes a program for at-risk herpetofauna including establishment of a monitoring program, conducting surveys in high-probability habitat for new occurrences, collection of GIS location data, and implementation of ecosystem management practices that support the conservation and management of at-risk herpetofauna species, including the Neuse River waterdog, known to occur at MCAS Cherry Point (Tetra Tech 2012, p. C-10). Additional protection for at-risk herpetofauna known to occur at MCAS Cherry Point would be provided through NEPA-initiated individual project review and agency consultation, as necessary (Tetra Tech 2012, p. C-10). Based on these considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that 1.1 miles (2 km) of the Trent River is subject to the MCAS Cherry Point OLF INRMP and that conservation efforts identified in the INRMP will provide a benefit to the Neuse River waterdog. Therefore, streams within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including 1.1 miles (2 km) of stream habitat in the Neuse River waterdog's critical habitat designation because of this exemption.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he or she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he or she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts. In this final rule, we have not considered any areas for exclusion from critical habitat.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To consider economic impacts of a designation, we prepared an incremental effects memorandum (IEM) and screening analysis which, together with our narrative and interpretation of effects, constitute our final economic analysis (FEA) of the critical habitat designation and related factors (IEC 2018, entire). The analysis, dated September 14, 2018, was made available for public review from May 22, 2019, through July 22, 2019 (84 FR 23644). The DEA addressed probable economic impacts of critical habitat designation for the Carolina madtom and Neuse River waterdog. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for the Carolina madtom and Neuse River waterdog is summarized below.

The critical habitat designation for the Neuse River waterdog totals

approximately 779 river miles (1,254 river km), all of which are currently occupied by the species. In these areas, any actions that may affect the species or its habitat would likely also affect critical habitat, and it is unlikely that any additional conservation efforts would be required to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the species. Therefore, the only additional costs that are expected in all of the critical habitat designation are administrative costs, due to the fact that this additional analysis will require time and resources by both the Federal action agency and the Service.

The critical habitat designation for the Carolina madtom totals approximately 257 river miles (414 river km), most of which is currently occupied by the species, but with two unoccupied units. In the occupied areas, any actions that may affect the species or its habitat would likely also affect critical habitat, and it is unlikely that any additional conservation efforts would be required to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the species. Therefore, the only additional costs that are expected in the occupied critical habitat designation are administrative costs, due to the fact that this additional analysis will require time and resources by both the Federal action agency and the Service. Two of the Carolina madtom critical habitat units (Unit 4: NR1 and Unit 7: TR1) are unoccupied. One of these units (NR1) overlaps entirely with river miles designated as critical habitat for the Neuse River waterdog. The second unoccupied unit (TR1) overlaps partially with Neuse River waterdog critical habitat, but includes approximately 7 river miles that do not overlap (representing approximately 3 percent of the Carolina madtom's designated critical habitat). However, these river miles are located in a remote area where future section 7 consultations are not anticipated.

Our analysis shows that these costs would not reach the threshold of "significant" under E.O. 12866 (IEC 2018, entire). For the critical habitat designations for both species, we anticipate a maximum of 115 section 7 consultations annually at a total incremental cost of approximately \$270,000 per year.

Exclusions Based on Economic Impacts

As discussed above, the Service considered the economic impacts of the critical habitat designation, and the

Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the Carolina madtom or Neuse River waterdog based on economic impacts. A copy of the IEM and screening analysis with supporting documents may be obtained by contacting the Raleigh Ecological Services Field Office (see **ADDRESSES**) or by downloading from the internet at <http://www.regulations.gov>.

Exclusions Based on Impacts on National Security and Homeland Security

Section 4(a)(3)(B)(i) of the Act (see Exemptions, above) may not cover all DoD lands or areas that pose potential national-security concerns (e.g., a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of "critical habitat." Nevertheless, when designating critical habitat under section 4(b)(2), the Service must consider impacts on national security, including homeland security, on lands or areas not covered by section 4(a)(3)(B)(i). Accordingly, we will always consider for exclusion from the designation areas for which DoD, Department of Homeland Security, or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns. We have determined that, other than the land exempted under section 4(a)(3)(B)(i) of the Act based upon the existence of an approved INRMP (see Exemptions, above), the lands within the designation of critical habitat for Carolina madtom or Neuse River waterdog are not owned or managed by the DoD or Department of Homeland Security, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not exercising her discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether there are permitted conservation plans covering the species in the area such as habitat conservation plans (HCPs), safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-

permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we determined that there are currently no permitted conservation plans or other non-permitted conservation agreements or partnerships for the Carolina madtom or Neuse River waterdog, and the final critical habitat designations do not include any Tribal lands or trust resources. We anticipate no impact on Tribal lands, partnerships, or permitted or non-permitted plans or agreements from this critical habitat designation. Accordingly, the Secretary is not exercising her discretion to exclude any areas from the final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

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

Executive Order (E.O.) 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

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

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 et seq.),

whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate only the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal

action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities will be directly regulated by this rulemaking, the Service certifies that this critical habitat designation will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this E.O. that outlines nine outcomes that may constitute “a significant adverse effect” when compared to not taking the regulatory action under consideration. The economic analysis finds that none of these criteria is relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with Carolina madtom or Neuse River waterdog conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

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

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

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or tribal governments”

with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act does not apply, nor does critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because most of the lands adjacent to the streams being designated as critical habitat are owned by private landowners. These entities do not fit the definition of “small governmental jurisdiction.” The 148 miles (238 km) for the Neuse River

waterdog and 91 miles (146 km) for the Carolina madtom of riparian habitat owned by Federal, State, or local governments that we are designating as critical habitat in this rule are either lands managed for conservation or lands already developed. Consequently, we do not believe that the critical habitat designation will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Carolina madtom and Neuse River waterdog in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment concludes that the designations of critical habitat for Carolina madtom and Neuse River waterdog do not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of the critical habitat designation with, the appropriate State resource agencies. We did not receive comments from the States. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local

governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the State, or on the relationship between the national government and the State, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) will be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this rule identifies the elements of physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for

the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act in connection with listing species and designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for

healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have identified no Tribal interests that will be affected by this rule.

References Cited

A complete list of references cited in this rule is available on the internet at <http://www.regulations.gov> and upon request from the Raleigh Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the U.S. Fish and Wildlife Service's Species Assessment Team and the Raleigh Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, by:

■ a. Adding an entry for “Waterdog, Neuse River” in alphabetical order under AMPHIBIANS; and

■ b. Adding an entry for “Madtom, Carolina” in alphabetical order under FISHES.

The additions read as set forth below.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
Amphibians				

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* Waterdog, Neuse River ...	* <i>Necturus lewisi</i>	* Wherever found	* T	* 86 FR [INSERT Federal Register PAGE WHERE THE DOCUMENT BEGINS], June 9, 2021; 50 CFR 17.43(f); ^{4d} 50 CFR 17.95(d). ^{CH}
Fishes				
* Madtom, Carolina	* <i>Noturus furiosus</i>	* Wherever found	* E	* 86 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS], June 9, 2021; 50 CFR 17.95(e). ^{CH}
* 	* 	* 	* 	*

■ 3. Amend § 17.43 by adding paragraph (f) to read as set forth below:

§ 17.43 Special rules—amphibians.

* * * * *

(f) Neuse River waterdog (*Necturus lewisi*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the Neuse River waterdog. Except as provided under paragraph (f)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

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

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

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take, as set forth at § 17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Species restoration efforts by State wildlife agencies, including collection of broodstock, tissue collection for genetic analysis, captive propagation, and subsequent stocking into currently occupied and unoccupied areas within the historical range of the species, and follow-up monitoring.

(B) Channel restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are

reconnected with their groundwater aquifers. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools composed of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands. Second- to third-order, headwater streams reconstructed in this way offer suitable habitats for the Neuse River waterdog and contain stable channel features, such as pools, glides, runs, and riffles, which could be used by the species for spawning, rearing, growth, feeding, migration, and other normal behaviors. Prior to restoration action, surveys to determine presence of Neuse River waterdog must be performed, and if located, waterdogs must be relocated prior to project implementation.

(C) Bank stabilization projects that use bioengineering methods to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. Following these bioengineering methods, stream banks may be stabilized using native species live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native species live fascines (live branch cuttings, usually willows, bound together into long, cigar shaped bundles), or native species brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Native species vegetation includes woody and herbaceous species appropriate for the

region and habitat conditions. These methods will not include the sole use of quarried rock (rip-rap) or the use of rock baskets or gabion structures.

(D) Forestry-related activities, including silvicultural practices, forest management work, and fire control tactics, that implement State-approved best management practices. In order for this exception to apply to forestry-related activities, these best management practices must achieve all of the following:

(1) Establish a streamside management zone alongside the margins of each waterway.

(2) Restrain visible sedimentation caused by the forestry-related activity from entering the waterway.

(3) Maintain native groundcover within the streamside management zone of the waterway, and promptly re-establish native groundcover if disturbed.

(4) Limit installation of vehicle or equipment crossings of the waterway to only where necessary for the forestry-related activity. Such crossings must:

(i) Have erosion and sedimentation control measures installed to divert surface runoff away and restrain visible sediment from entering the waterway;

(ii) Allow for movement of aquatic organisms within the waterway; and

(iii) Have native groundcover applied and maintained through completion of the forestry-related activity.

(5) Prohibit the use of tracked or wheeled vehicles for reforestation site preparation within the streamside management zone of the waterway.

(6) Prohibit locating log decks, skid trails, new roads, and portable mill sites in the streamside management zone of the waterway.

(7) Prohibit obstruction and impediment of the flow of water within the waterway, caused by direct deposition of debris or soil by the forestry-related activity.

(8) Maintain shade over the waterway similar to that observed prior to the forestry-related activity.

(9) Prohibit discharge of any solid waste, petroleum, pesticide, fertilizer, or other chemical into the waterway.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

■ 4. Amend § 17.95 by:

■ a. Adding to paragraph (d) an entry for “Neuse River Waterdog (*Necturus lewisi*)” following the entry for “Black Warrior Waterdog (*Necturus alabamensis*)”; and

■ b. Adding to paragraph (e) an entry for “Carolina Madtom (*Noturus furiosus*)” following the entry for “Conasauga Logperch (*Percina jenkinsi*)”.

The additions read as follows.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

NEUSE RIVER WATERDOG (*Necturus lewisi*)

(1) Critical habitat units are depicted for Craven, Durham, Edgecombe, Franklin, Granville, Greene, Halifax, Johnston, Jones, Lenoir, Nash, Orange, Person, Pitt, Wake, Warren, Wayne, and Wilson Counties, North Carolina, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of Neuse River waterdog consist of the following components:

(i) Suitable substrates and connected instream habitats, characterized by geomorphically stable stream channels and banks (*i.e.*, channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation) with habitats that support a diversity of native aquatic fauna (such as stable riffle-run-pool habitats that provide flow refuges consisting of silt-free gravel, small cobble, coarse sand, and leaf litter substrates) as well as abundant cover and burrows used for nesting.

(ii) Adequate flows, or a hydrologic flow regime (which includes the severity, frequency, duration, and seasonality of discharge over time), necessary to maintain instream habitats where the species is found and to maintain connectivity of streams with the floodplain, allowing the exchange of nutrients and sediment for maintenance of the waterdog’s habitat, food availability, and ample oxygenated flow for spawning and nesting habitat.

(iii) Water quality (including, but not limited to, conductivity, hardness, turbidity, temperature, pH, ammonia, heavy metals, and chemical constituents) necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages.

(iv) Invertebrate and fish prey items, which are typically hellgrammites, crayfish, mayflies, earthworms, snails,

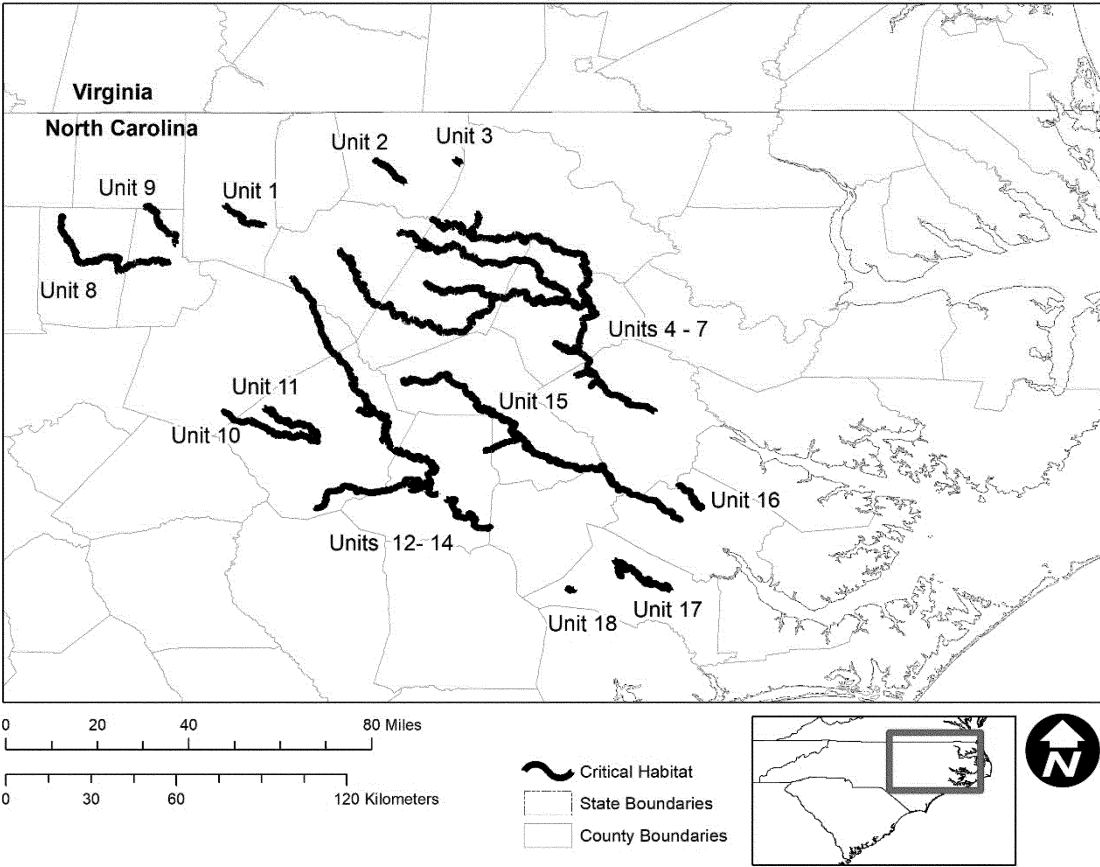
beetles, centipedes, slugs, and small fish.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on July 9, 2021.

(4) *Critical habitat map units.* Data layers defining map units were created by overlaying Natural Heritage Element Occurrence data and U.S. Geological Survey (USGS) hydrologic data for stream reaches. The hydrologic data used in the critical habitat maps were extracted from the USGS 1:1M scale nationwide hydrologic layer (https://nationalmap.gov/small_scale/mld/1nethyd.html) with a projection of EPSG:4269–NAD83 Geographic. The North Carolina Natural Heritage program’s species presence data were used to select specific stream segments for inclusion in the critical habitat layer. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at <http://www.regulations.gov> under Docket No. FWS–R4–ES–2018–0092 and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map follows:

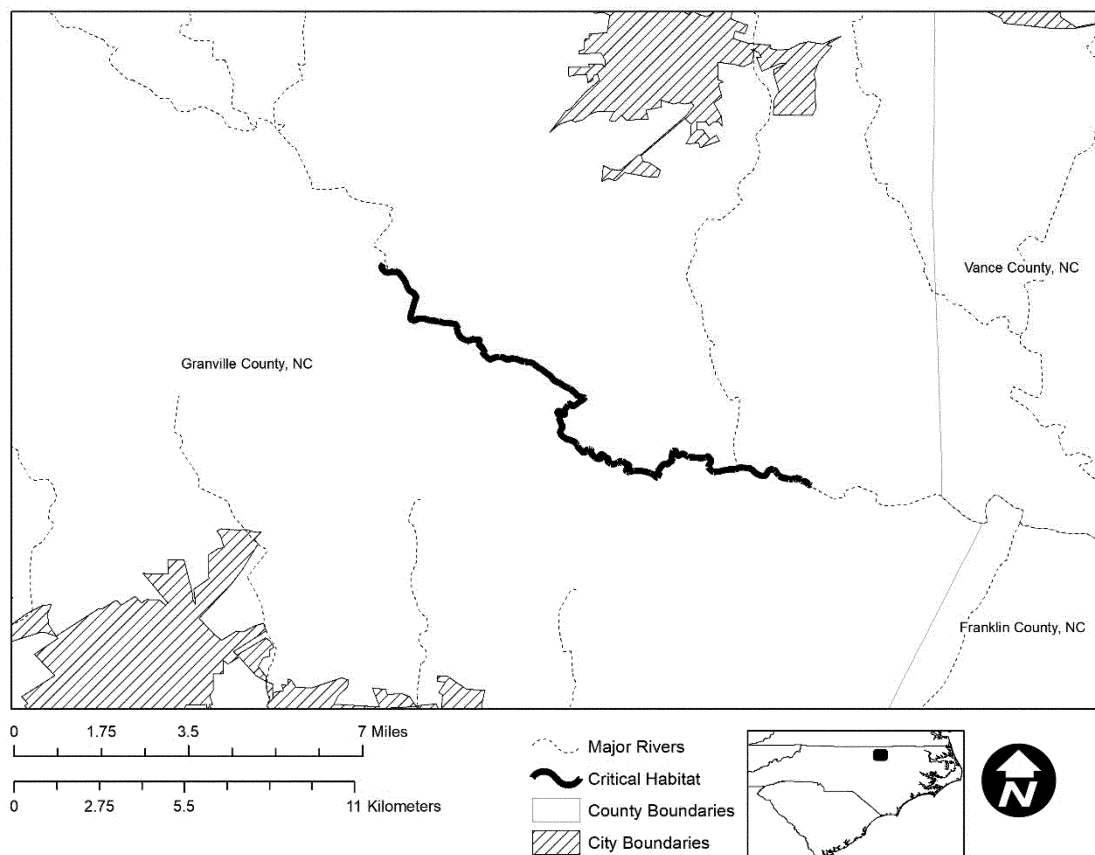
Index Map of Critical Habitat Units for Neuse River Waterdog



(6) Unit 1: TAR1–Upper Tar River, Granville County, North Carolina.
(i) This unit consists of 12.3 river miles (19.8 river kilometers) of the

Upper Tar River from approximately SR1004 (Old NC 75) downstream to SR1622 (Cannady’s Mill Road). Unit 1

includes stream habitat up to bankfull height.
(ii) Map of Unit 1 follows:

Map of Unit 1: TAR1 - Upper Tar River Critical Habitat Unit for Neuse River Waterdog

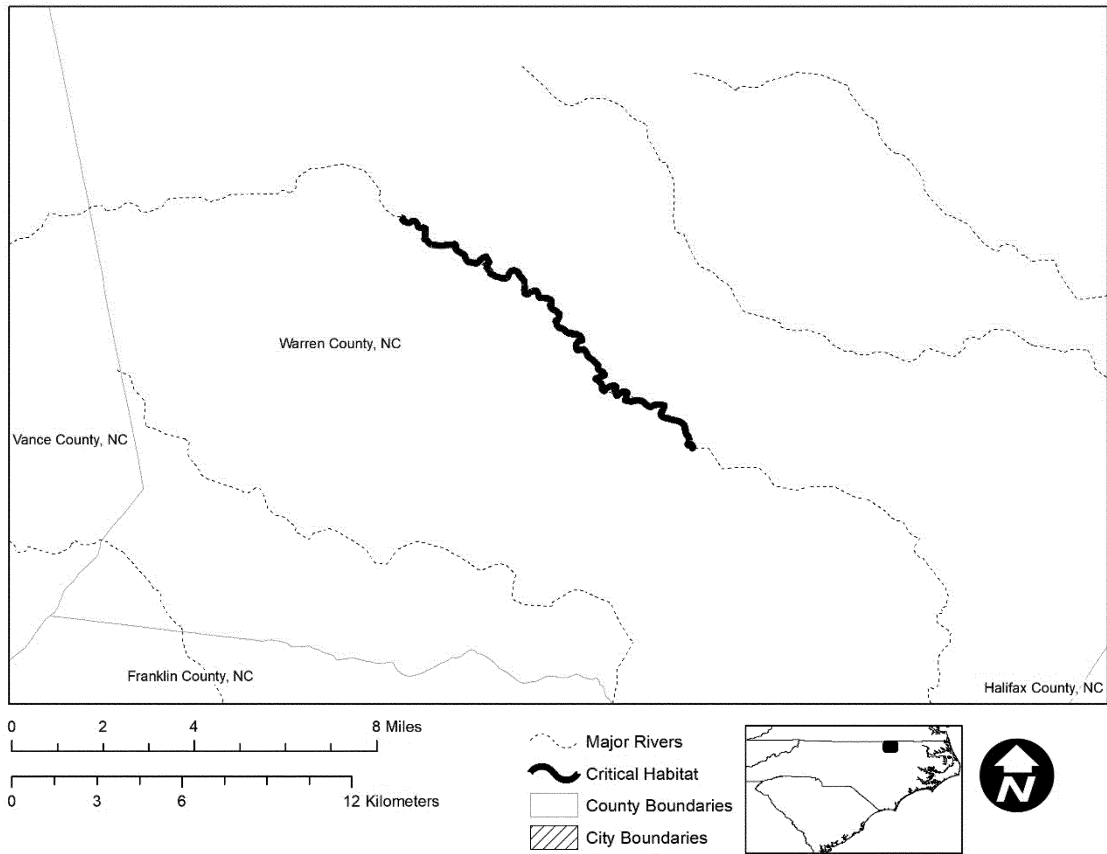
(7) Unit 2: TAR2—Upper Fishing Creek, Warren County, North Carolina.

(i) This unit consists of 10.5 miles (17 kilometers) of Upper Fishing Creek from SR1118 (No Bottom Drive) downstream

to NC58. Unit 2 includes stream habitat up to bankfull height.

(ii) Map of Unit 2 follows:

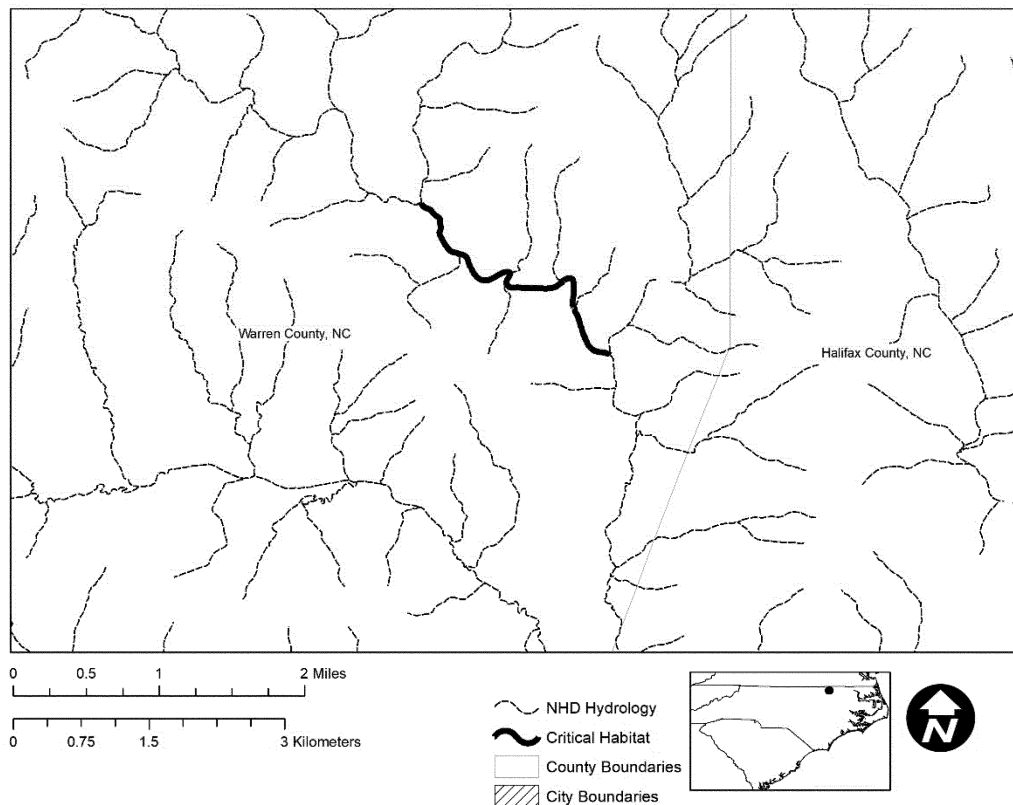
Map of Unit 2: TAR2 - Upper Fishing Creek Critical Habitat Unit for Neuse River Waterdog



- (8) Unit 3: TAR3–Bens Creek, Warren County, North Carolina.

(i) This unit consists of 2 miles (3.2 km) of Bens Creek beginning
- approximately one mile upstream and ending approximately one mile downstream of SR1509 (Odell-Littleton
- Road). Unit 3 includes stream habitat up to bankfull height.

(ii) Map of Unit 3 follows:

Map of Unit 3: TAR3 - Ben's Creek Critical Habitat Unit for Neuse River Waterdog

(9) Unit 4: TAR4a—Fishing Creek Subbasin, Edgecombe, Halifax, Nash, and Warren Counties, North Carolina; Unit 5: TAR4b—Sandy/Swift Creek, Edgecombe, Franklin, Nash, and Warren Counties, North Carolina; Unit 6: TAR4c—Middle Tar River Subbasin, Edgecombe, Franklin, and Nash Counties, North Carolina; and Unit 7: TAR4d—Lower Tar River Subbasin, Edgecombe and Pitt Counties, North Carolina.

(i) Units 4, 5, 6, and 7 include stream habitat up to bankfull height.

(ii) Unit 4 consists of 82.8 miles (133.3 km) of lower Little Fishing Creek approximately 1.6 miles (2.6 km) upstream of SR1214 (Silvertown Rd)

downstream to the confluence with Fishing Creek, and including the mainstem of Fishing Creek from the Warren/Halifax County line to the confluence with the Tar River in Edgecombe County.

(iii) Unit 5 consists of 72.5 miles (116.8 kilometers) of Sandy Creek downstream of SR 1451 (Leonard Road) to the confluence with the Tar River, including Red Bud Creek downstream of the Franklin/Nash county line to the confluence with Swift Creek.

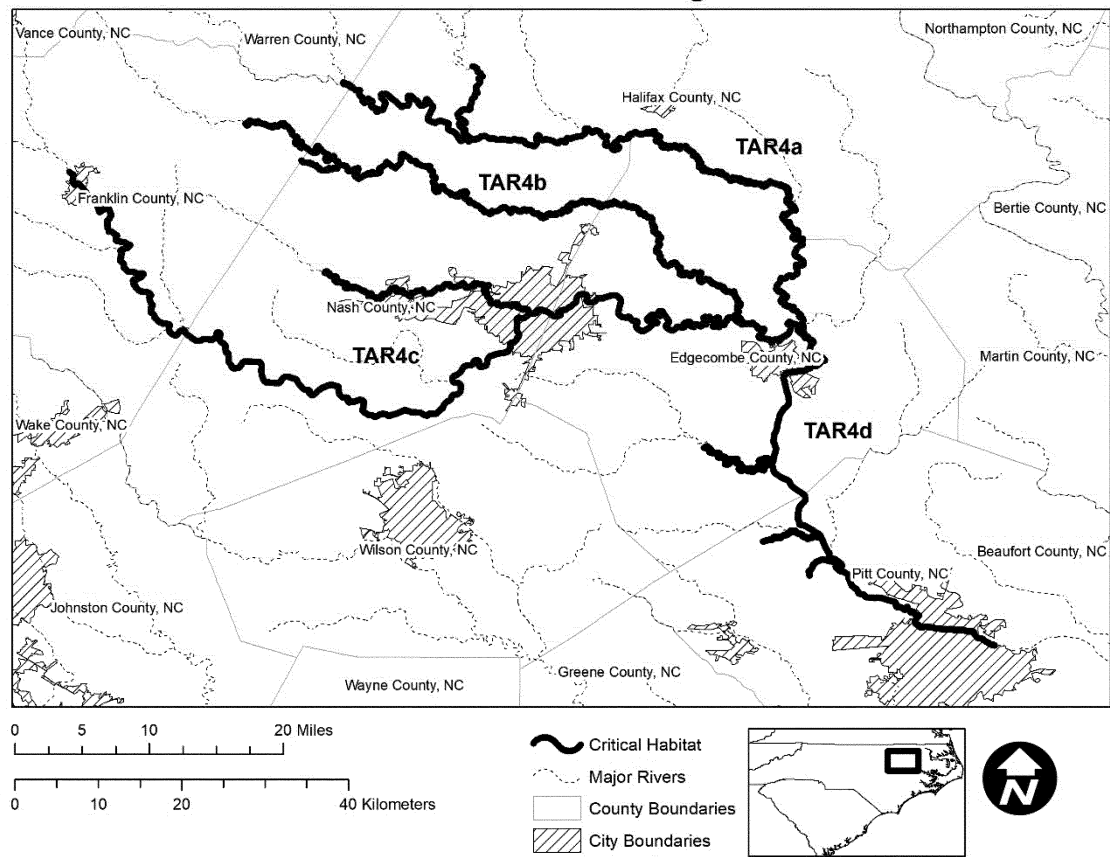
(iv) Unit 6 consists of 111 miles (179 kilometers) of the Middle Tar River from upstream of Highway 401 downstream to the confluence with Fishing Creek, including Stony Creek below SR1300

(Boddies' Millpond Rd), downstream to the confluence with the Tar River.

(v) Unit 7 consists of 59.9 miles (96.3 kilometers) in the Lower Tar River Subbasin from the confluence with Fishing Creek downstream to the confluence with Barber Creek near SR1533 (Port Terminal Road). This unit includes portions of Town Creek below NC111 to the confluence with the Tar River, Otter Creek below SR1251 to the confluence with the Tar River, and Tyson Creek below SR1258 to the confluence with the Tar River.

(vi) Map of Units 4, 5, 6, and 7 follows:

Map of Units 4 - 7: TAR4 - Middle/Lower Tar River Subbasins Critical Habitat Units for Neuse River Waterdog

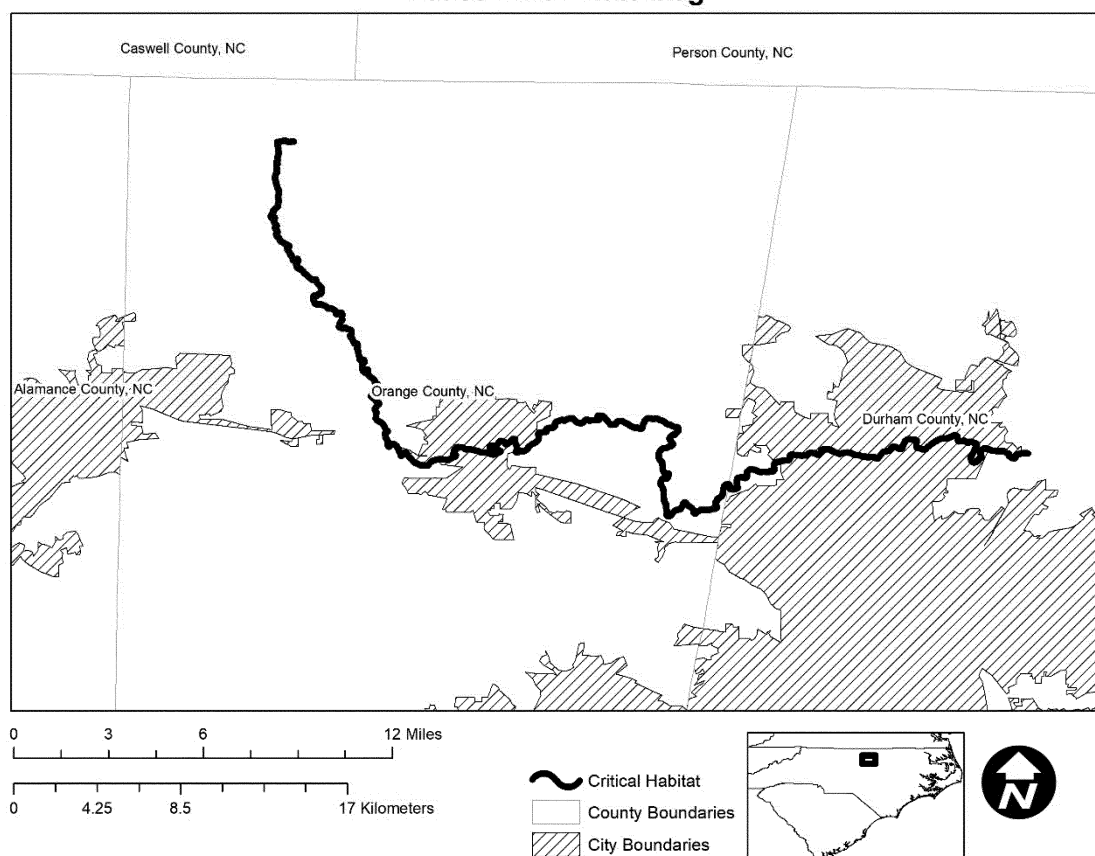


(10) Unit 8: NR1–Eno River, Durham and Orange Counties, North Carolina.

(i) This unit consists of 43.9 miles (70.6 kilometers) of the Eno River from NC86 downstream to the inundated portion of Falls Lake. Unit 8 includes stream habitat up to bankfull height.

(ii) Map of Unit 8 follows:

Map of Unit 8: NR1 - Eno River Subbasin Critical Habitat Unit for Neuse River Waterdog



(11) Unit 9: NR2—Flat River, Durham and Person Counties, North Carolina.

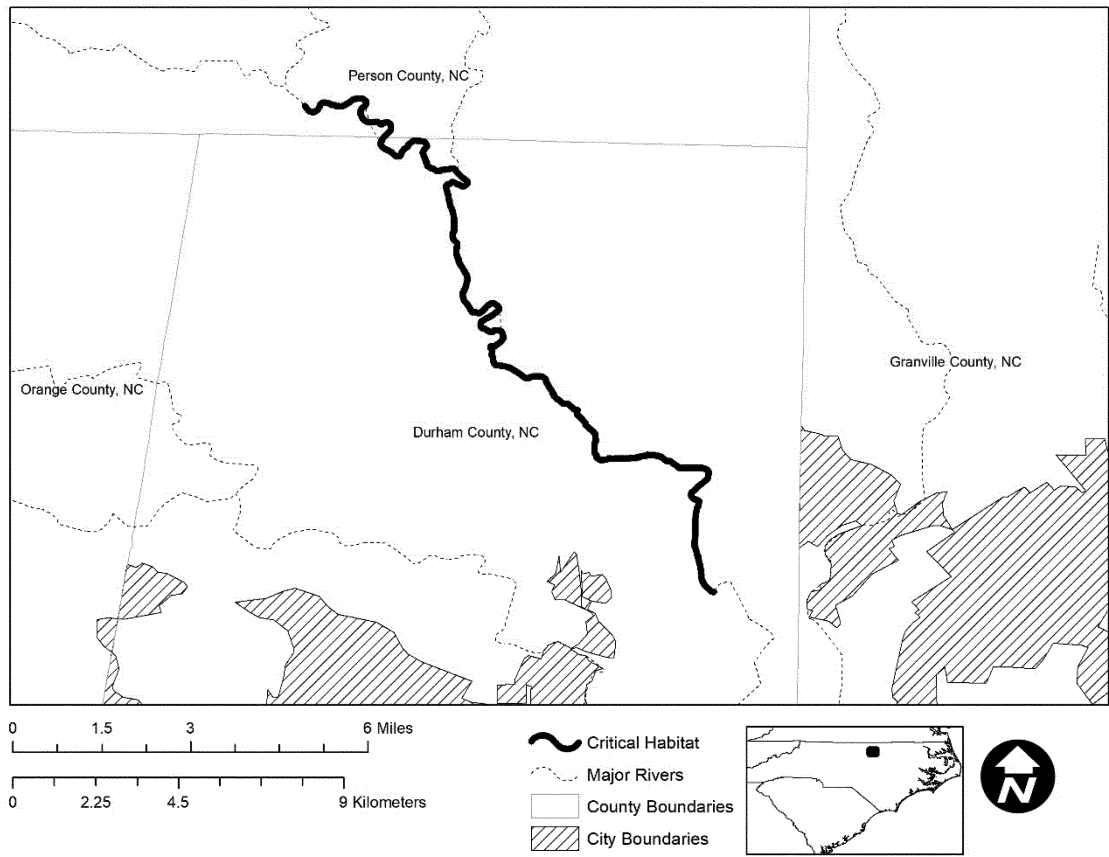
(i) This unit consists of 15.2 miles (24.5 kilometers) of the Flat River from

SR1739 (Harris Mill Road) downstream to the inundated portion of Falls Lake.

Unit 9 includes stream habitat up to bankfull height.

(ii) Map of Unit 9 follows:

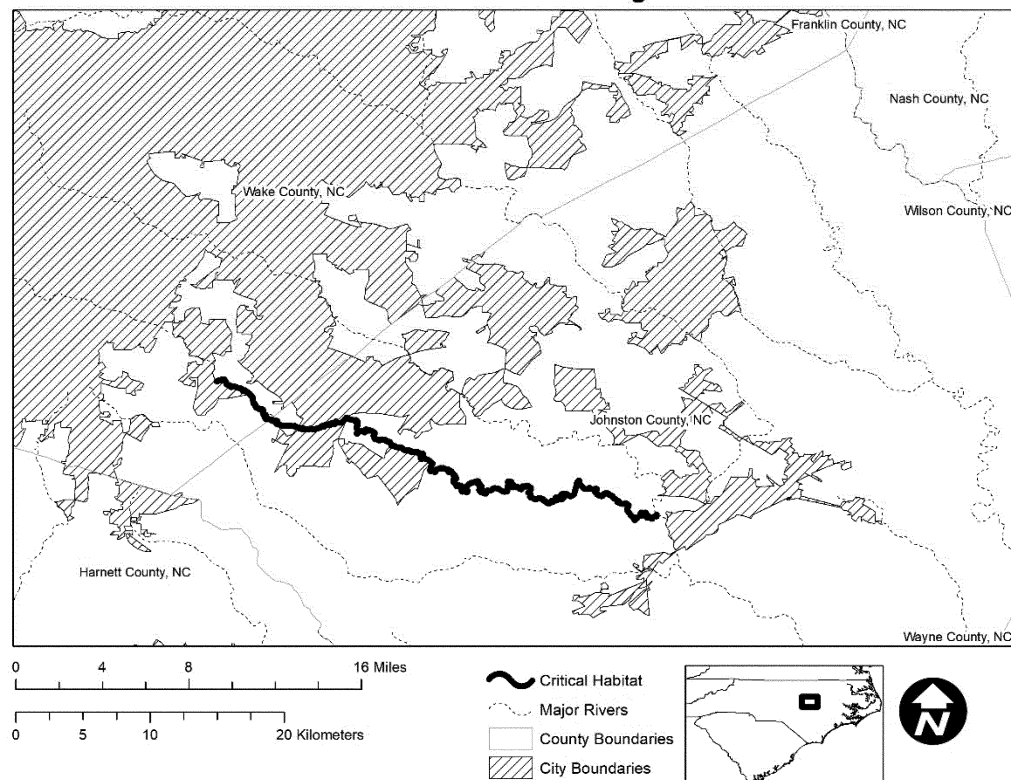
Map of Unit 9: NR2 - Flat River Subbasin Critical Habitat Unit for Neuse River Waterdog



- (12) Unit 10: NR3–Middle Creek, Johnston and Wake Counties, North Carolina.
- (i) This unit consists of 30.8 miles (49.6 km) of Middle Creek from Southeast Regional Park downstream to the confluence with Swift Creek. Unit 10 includes stream habitat up to bankfull height.

(ii) Map of Unit 10 follows:

**Map of Unit 10: NR3 - Middle Creek Subbasin Critical Habitat Unit for
Neuse River Waterdog**



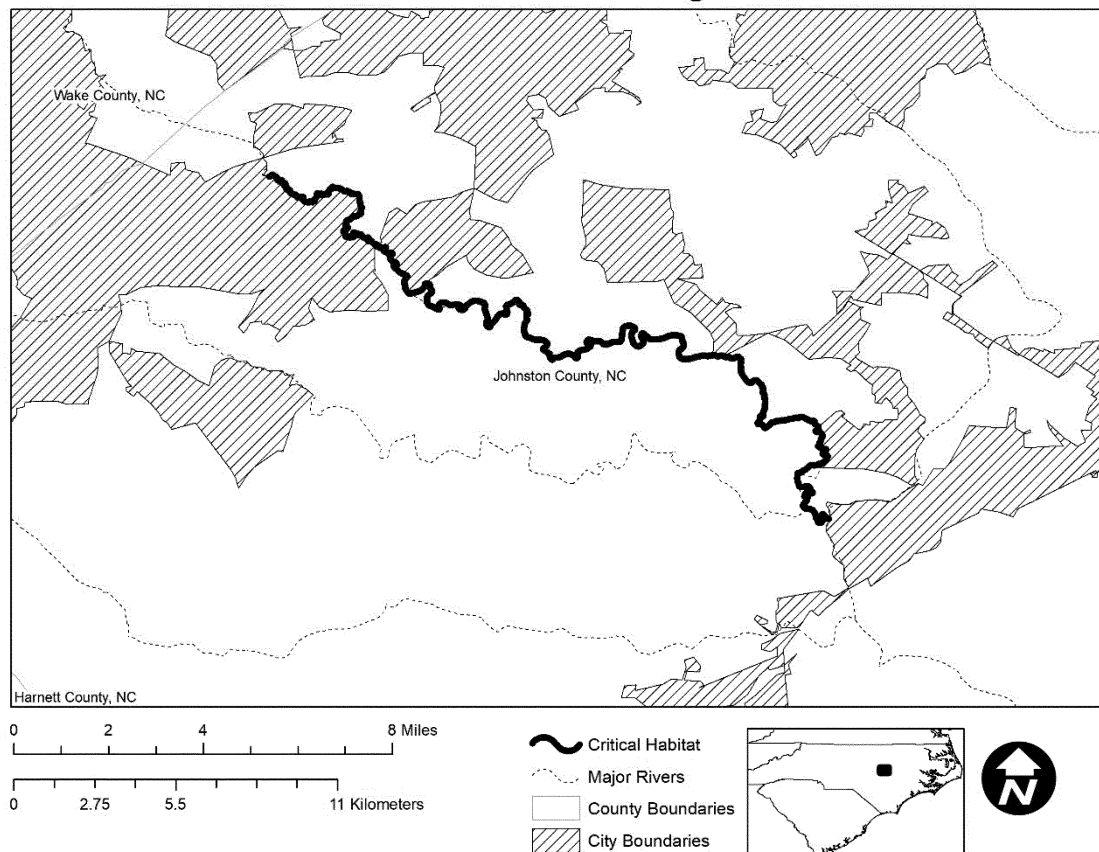
(13) Unit 11: NR4–Swift Creek,
Johnston County, North Carolina.

(i) This unit consists of 24 miles (38.6 kilometers) of Swift Creek from NC42 downstream to the confluence with the

Neuse River. Unit 11 includes stream habitat up to bankfull height.

(ii) Map of Unit 11 follows:

**Map of Unit 11: NR4 - Swift Creek Subbasin Critical Habitat Unit for
Neuse River Waterdog**



(14) Unit 12: NR5a–Little River, Franklin, Johnston, Wake, and Wayne Counties, North Carolina; Unit 13: NR5b–Mill Creek, Johnston and Wayne Counties, North Carolina; and Unit 14: NR5c–Middle Neuse River, Wayne County, North Carolina.

(i) Units 12, 13, and 14 include stream habitat up to bankfull height.

(ii) Unit 12 consists of 90.8 miles (146.1 kilometers) of the Little River from near NC96 in Wake County downstream to the confluence with the Neuse River, including Buffalo Creek from NC39 to the confluence with the Little River.

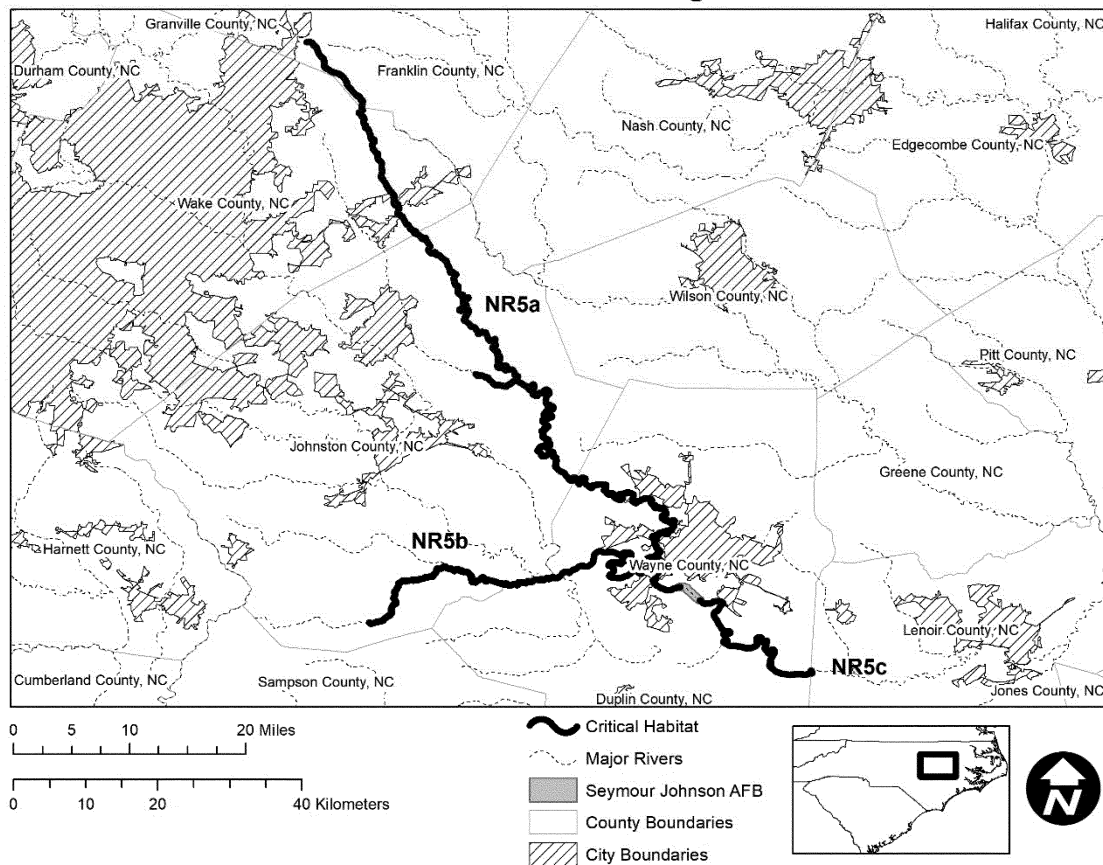
(iii) Unit 13 consists of 20.8 miles (33.5 kilometers) of Mill Creek from

upstream of US701 downstream to the confluence with the Neuse River.

(iv) Unit 14 consists of 43.2 miles (69.5 kilometers) of the Middle Neuse River from the confluence with Mill Creek downstream to the Wayne/Lenoir County line.

(v) Map of Units 12, 13, and 14 follows:

Map of Units 12 - 14 : NR5 - Middle Neuse River Subbasins Critical Habitat Units for Neuse River Waterdog



(15) Unit 15: NR6—Contentnea Creek/ Lower Neuse River Subbasin, Craven, Greene, Lenoir, Pitt, Wayne, and Wilson Counties, North Carolina.

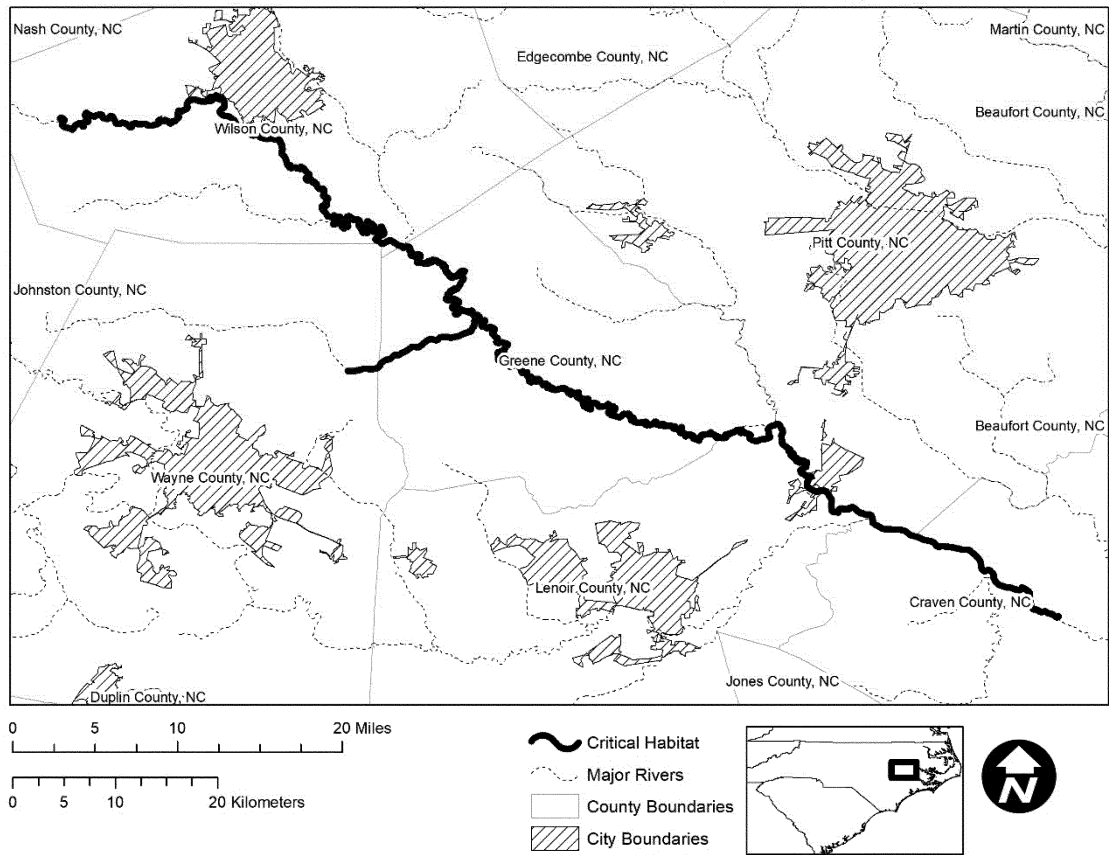
(i) This unit consists of 114.8 miles (184.8 kilometers) of Contentnea Creek

from NC581 downstream to its confluence with the Neuse River, Nahunta Swamp from the Wayne/ Greene County line to the confluence with Contentnea Creek, and the Neuse

River from the confluence with Contentnea Creek to the confluence with Pinetree Creek. Unit 15 includes stream habitat up to bankfull height.

(ii) Map of Unit 15 follows:

Map of Unit 15: NR6 - Contentnea Creek/Lower Neuse River Subbasin
Critical Habitat Unit for Neuse River Waterdog

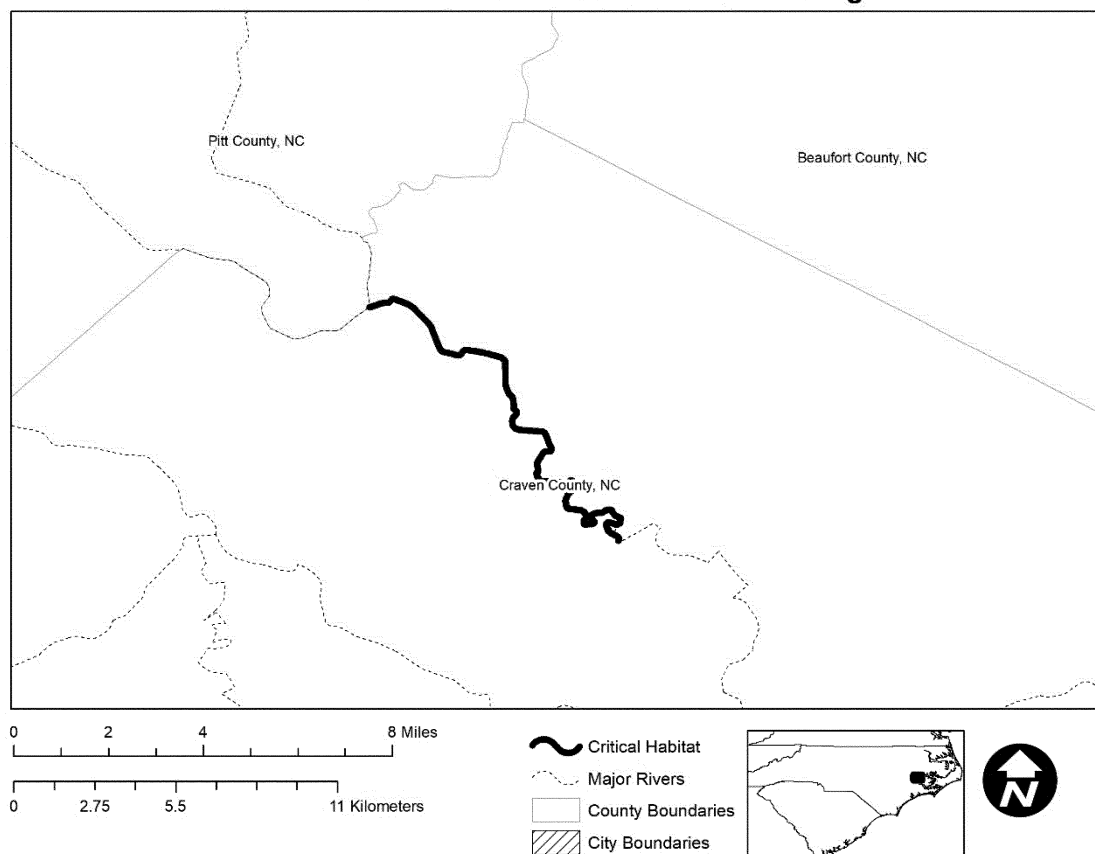


(16) Unit 16: NR7–Swift Creek (Lower Neuse), Craven County, North Carolina. from SR1931 (Beaver Camp Rd) downstream to SR1440 (Streets Ferry Rd). Unit 16 includes stream habitat up to bankfull height.

(i) This unit consists of 10.3 miles (16.5 rier kilometers) of Swift Creek

(ii) Map of Unit 16 follows:

**Map of Unit 16: NR7 - Swift Creek (Lower Neuse)
Critical Habitat Unit for Neuse River Waterdog**



(17) Unit 17: TR1—Trent River, Jones County, North Carolina.

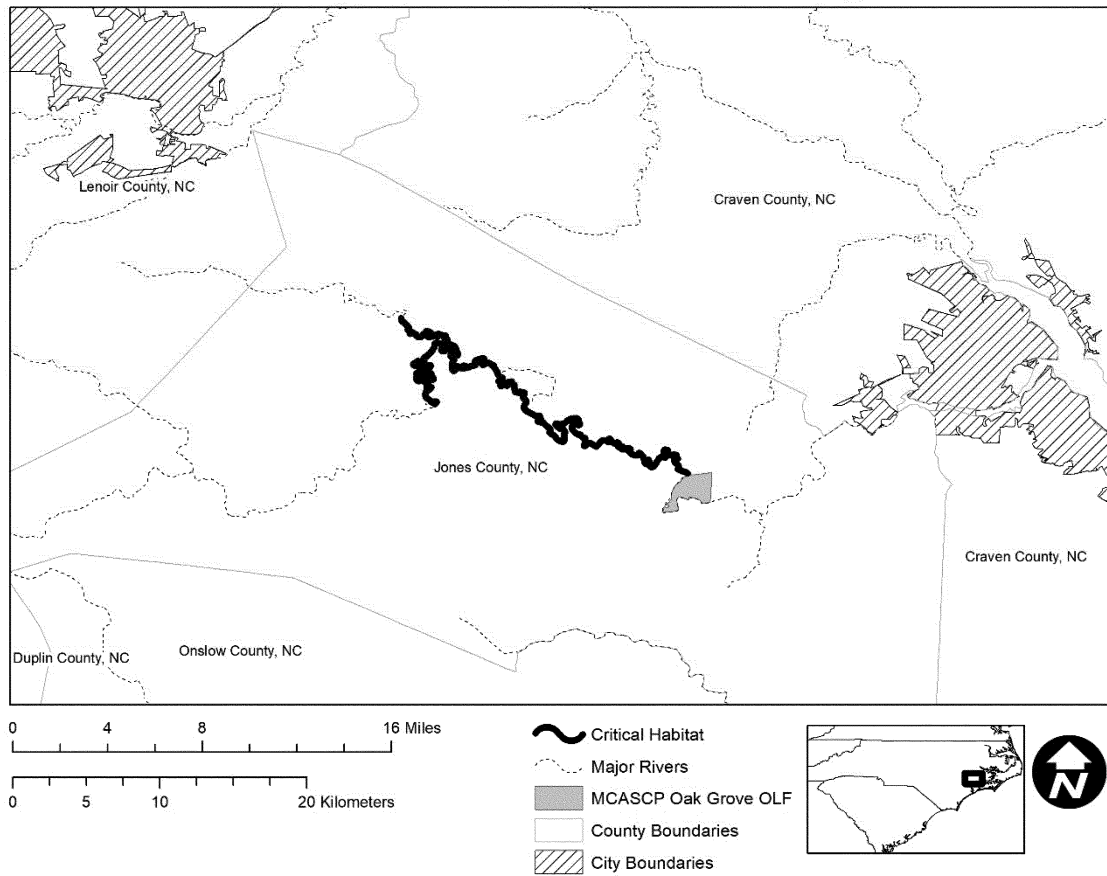
(i) This unit consists of 32.5 miles (52.4 kilometers) of Beaver Creek from SR1316 (McDaniel Fork Rd) to the

confluence with the Trent River, and Trent River from the confluence with Poplar Branch downstream to SR1121 (Oak Grove Rd) crossing at the Marine

Corps Cherry Point property. Unit 17 includes stream habitat up to bankfull height.

(ii) Map of Unit 17 follows:

Map of Unit 17: TR1 - Trent River Subbasin
Critical Habitat Unit for Neuse River Waterdog

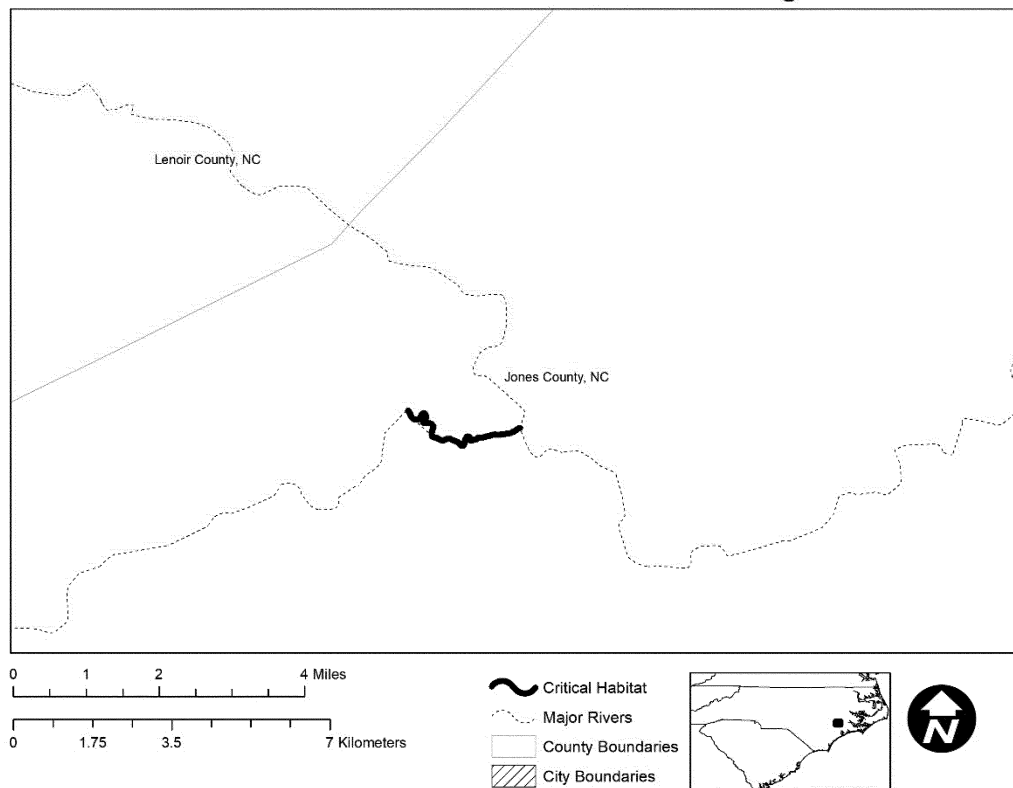


(18) Unit 18: TR2–Tuckahoe Swamp, Jones County, North Carolina.
(i) This unit consists of 2 miles (3.2 km) of Tuckahoe Swamp in Jones

County, North Carolina. Unit 18 begins upstream of SR1142 (Weyerhaeuser Road) to the confluence with the Trent

River. Unit 18 includes stream habitat up to bankfull height.
(ii) Map of Unit 18 follows:

**Map of Unit 18: TR2 - Tuckahoe Swamp
Critical Habitat Unit for Neuse River Waterdog**



(e) *Fishes.*

* * * * *

Carolina Madtom (*Noturus furiosus*)

(1) Critical habitat units are depicted for Durham, Edgecombe, Franklin, Granville, Halifax, Johnston, Jones, Nash, Orange, Vance, Warren, and Wilson Counties, North Carolina, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the Carolina madtom consist of the following components:

(i) Suitable substrates and connected instream habitats, characterized by geomorphically stable stream channels and banks (*i.e.*, channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation) with habitats that support a diversity of freshwater native fish (such as stable riffle-run-pool habitats that provide flow refuges consisting of silt-free gravel, small cobble, coarse sand, and leaf litter substrates) as well as abundant cover used for nesting.

(ii) Adequate flows, or a hydrologic flow regime (which includes the

severity, frequency, duration, and seasonality of discharge over time), necessary to maintain instream habitats where the species is found and to maintain connectivity of streams with the floodplain, allowing the exchange of nutrients and sediment for maintenance of the fish's habitat, food availability, and ample oxygenated flow for spawning and nesting habitat.

(iii) Water quality (including, but not limited to, conductivity, hardness, turbidity, temperature, pH, ammonia, heavy metals, and chemical constituents) necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages.

(iv) Aquatic macroinvertebrate prey items, which are typically dominated by larval midges, mayflies, caddisflies, dragonflies, and beetle larvae.

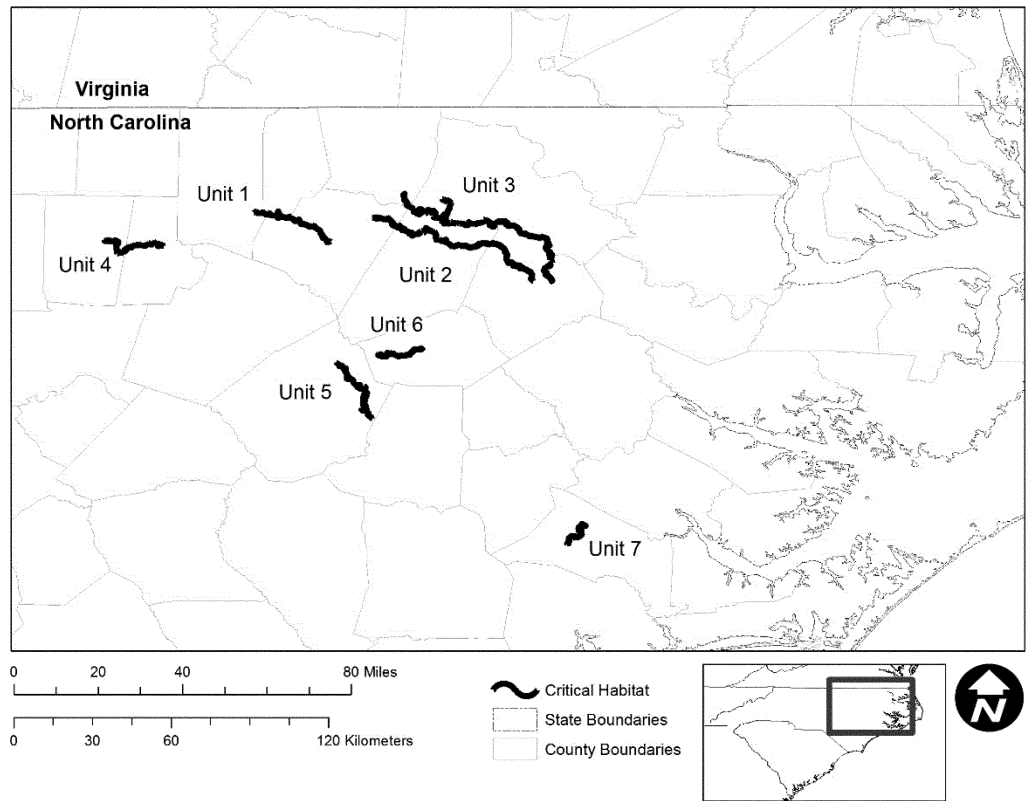
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on July 9, 2021.

(4) *Critical habitat map units.* Data layers defining map units were created

by overlaying Natural Heritage Element Occurrence data and U.S. Geological Survey (USGS) hydrologic data for stream reaches. The hydrologic data used in the critical habitat maps were extracted from the USGS 1:1M scale nationwide hydrologic layer (https://nationalmap.gov/small_scale/mld/1nethyd.html) with a projection of EPSG:4269–NAD83 Geographic. The North Carolina Natural Heritage program's species presence data were used to select specific stream segments for inclusion in the critical habitat layer. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at <http://www.regulations.gov> under Docket No. FWS–R4–ES–2018–0092 and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map follows:

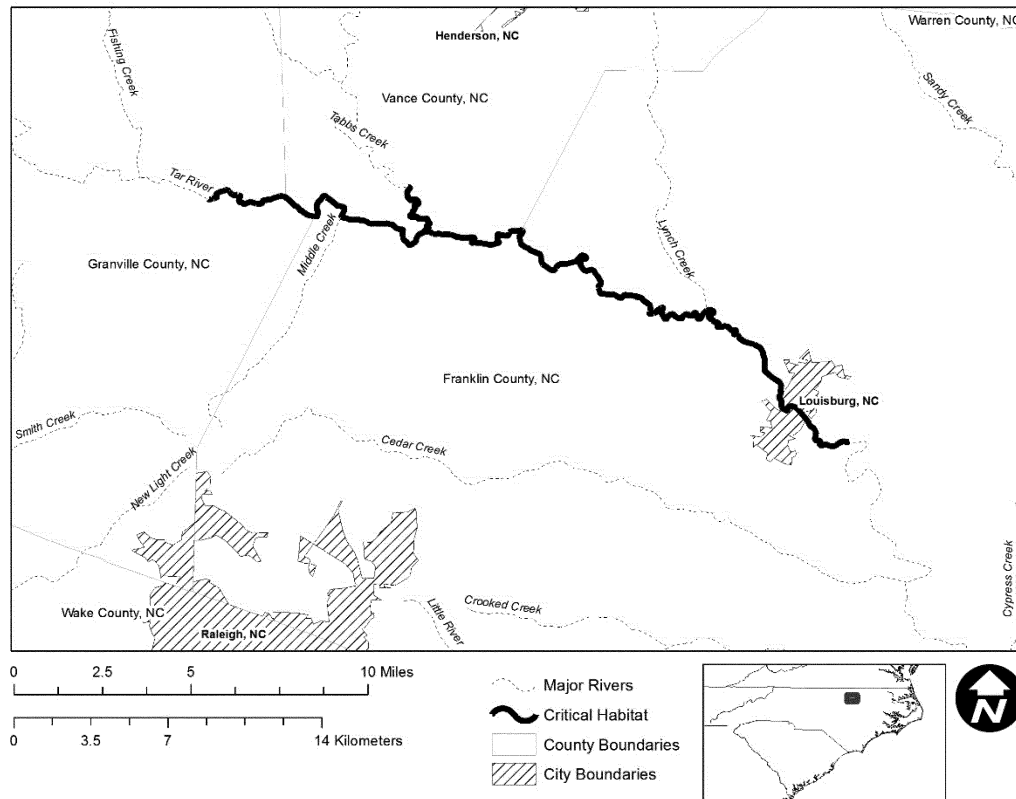
Index Map of Critical Habitat Units for Carolina Madtom



- (6) Unit 1: TAR1–Upper Tar River, Franklin, Granville, and Vance Counties, North Carolina.

(i) This unit consists of 26 river miles (42 river kilometers) of the Upper Tar River from the confluence with Sand Creek to the confluence with Sycamore Creek. Unit 1 includes stream habitat up to bankfull height.

(ii) Map of Unit 1 follows:

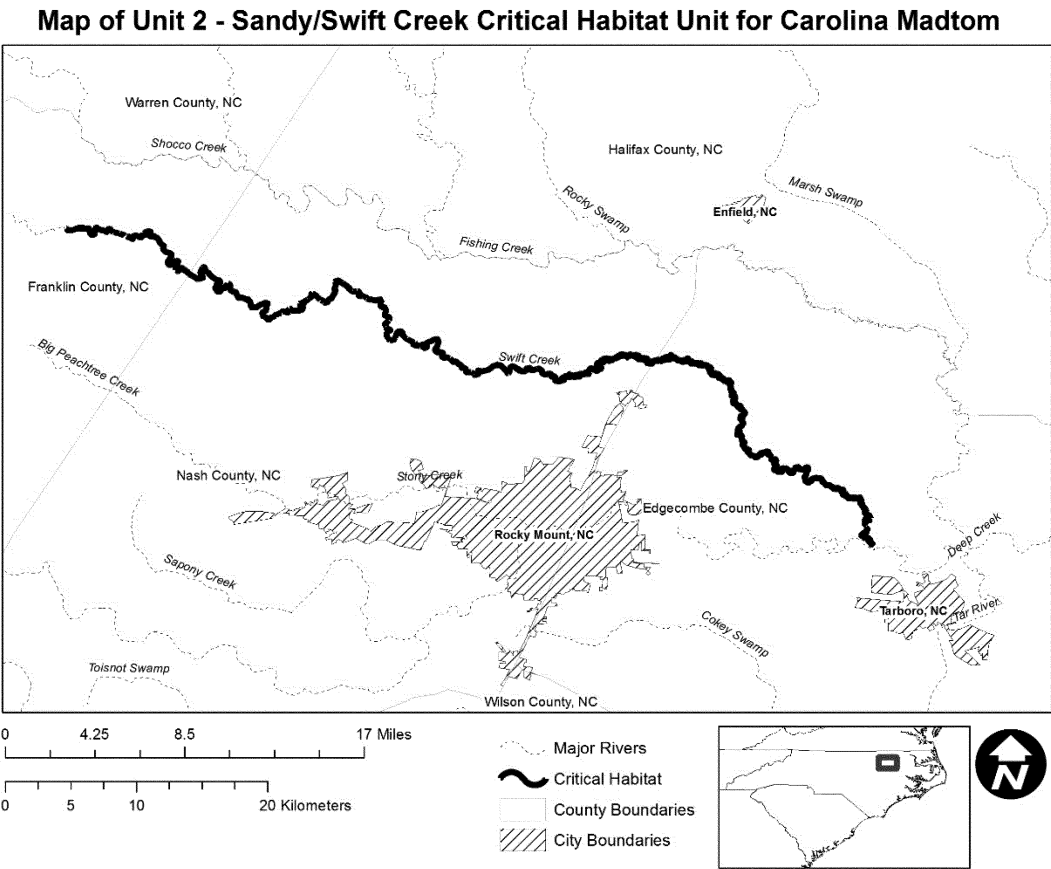
Map of Unit 1 - Upper Tar River Critical Habitat Unit for Carolina Madtom

(7) Unit 2: TAR2–Sandy/Swift Creek, Edgecombe, Franklin, Halifax, Nash, Vance, and Warren Counties, North Carolina.

(i) This unit consists of 66 river miles (106 river kilometers) of Sandy and Swift Creeks, located downstream from NC561 to the confluence with the Tar

River. Unit 2 includes stream habitat up to bankfull height.

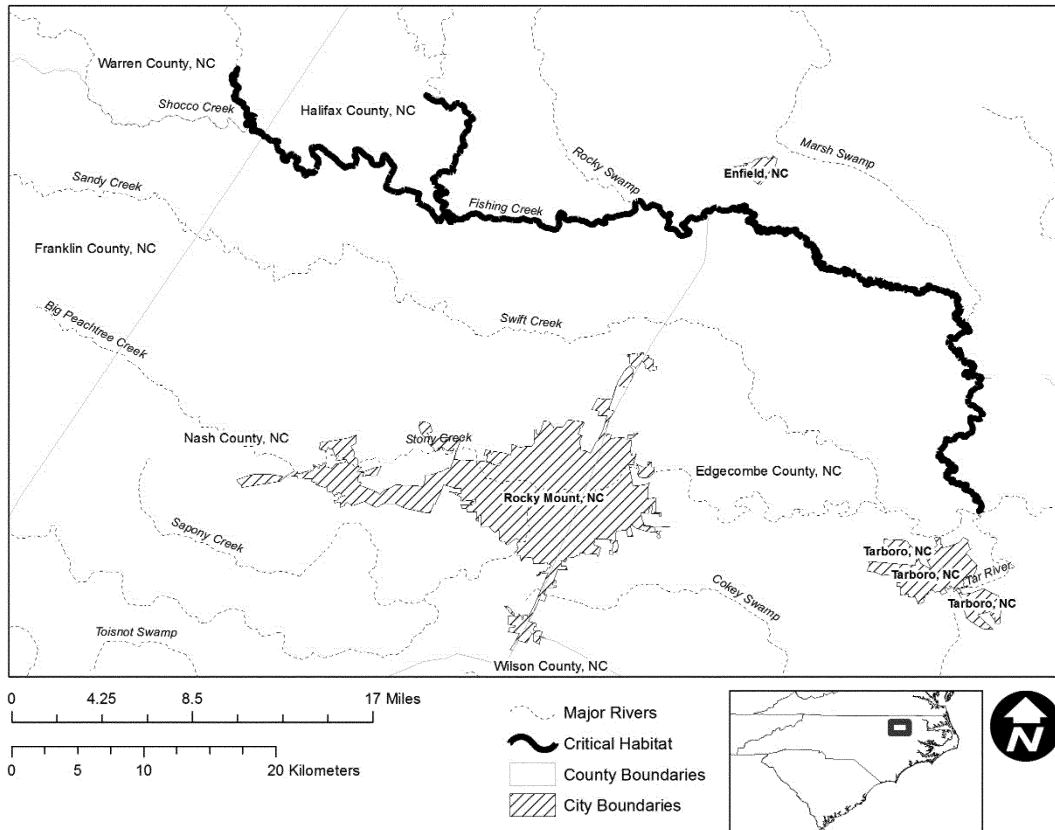
(ii) Map of Unit 2 follows:



- (8) Unit 3: TAR3–Fishing Creek Subbasin, Edgecombe, Franklin, Halifax, Nash, and Warren Counties, North Carolina.

(i) This unit consists of 86 river miles (138 river kilometers) of Fishing Creek from the confluence with Hogpen Branch to the confluence with the Tar River, and Little Fishing Creek from Medoc Mountain Road (SR1002) to the confluence with Fishing Creek. Unit 3 includes stream habitat up to bankfull height.

(ii) Map of Unit 3 follows:

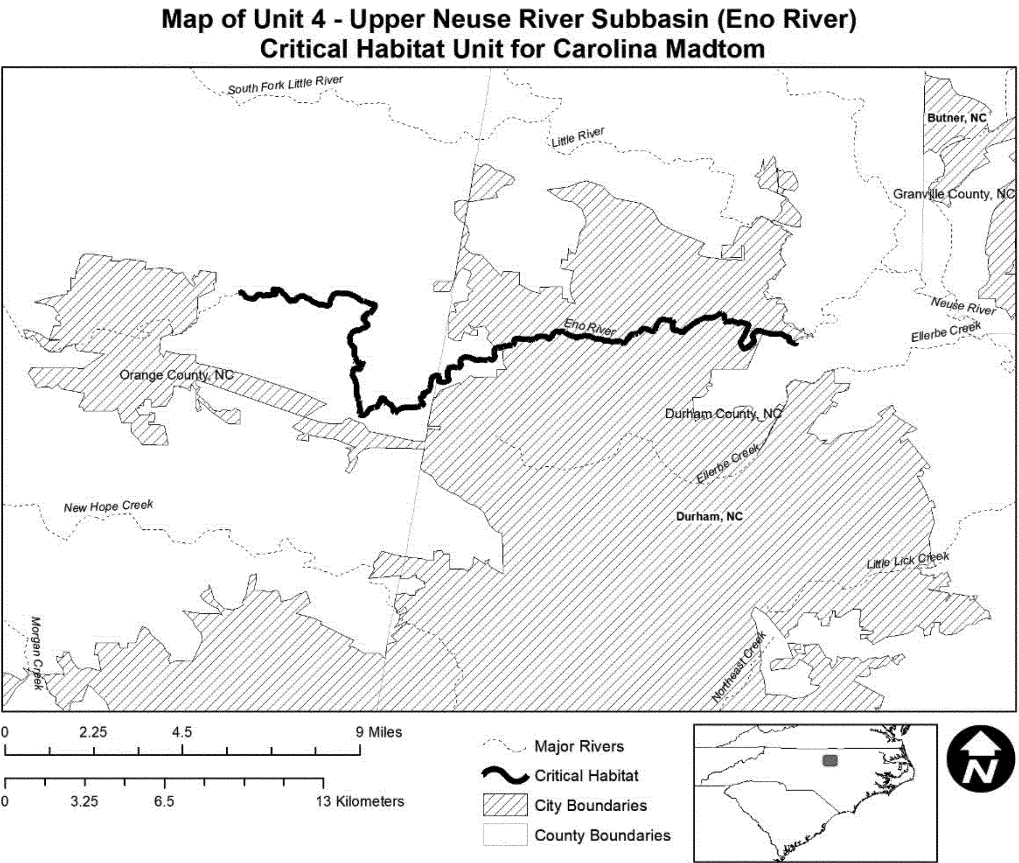
Map of Unit 3 - Fishing Creek Subbasin Critical Habitat Unit for Carolina Madtom

(9) Unit 4: NR1–Upper Neuse River Subbasin (Eno River), Durham and Orange Counties, North Carolina.

(i) This unit consists of 20 river miles (32 river kilometers) of the Upper Neuse River extending from Eno River State Park downstream of NC70 to the

confluence with Cabin Creek near Falls Lake impoundment. Unit 4 includes stream habitat up to bankfull height.

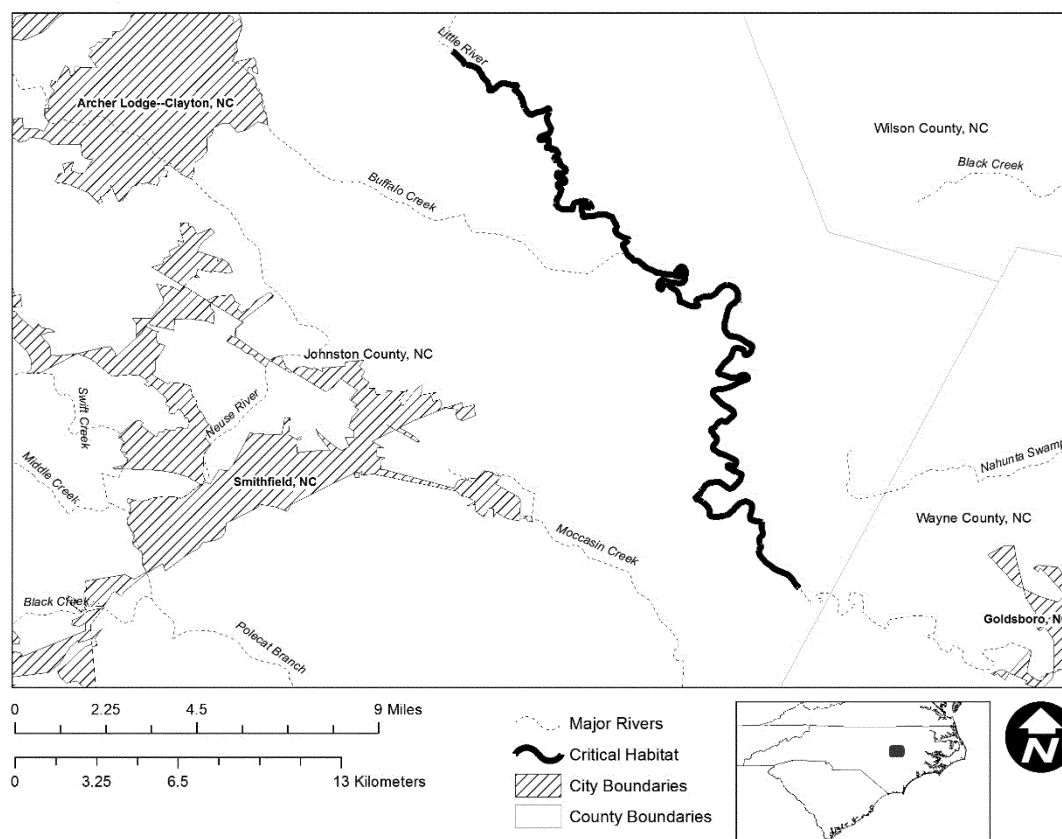
(ii) Map of Unit 4 follows:



- (10) Unit 5: NR2–Little River, Johnston County, North Carolina.

(i) This unit consists of 28 river miles (45 river kilometers) of the Upper and
- Lower Little River from NC42 to the Johnston/Wayne County line. Unit 5
- includes stream habitat up to bankfull height.

(ii) Map of Unit 5 follows:

Map of Unit 5 - Little River Critical Habitat Unit for Carolina Madtom

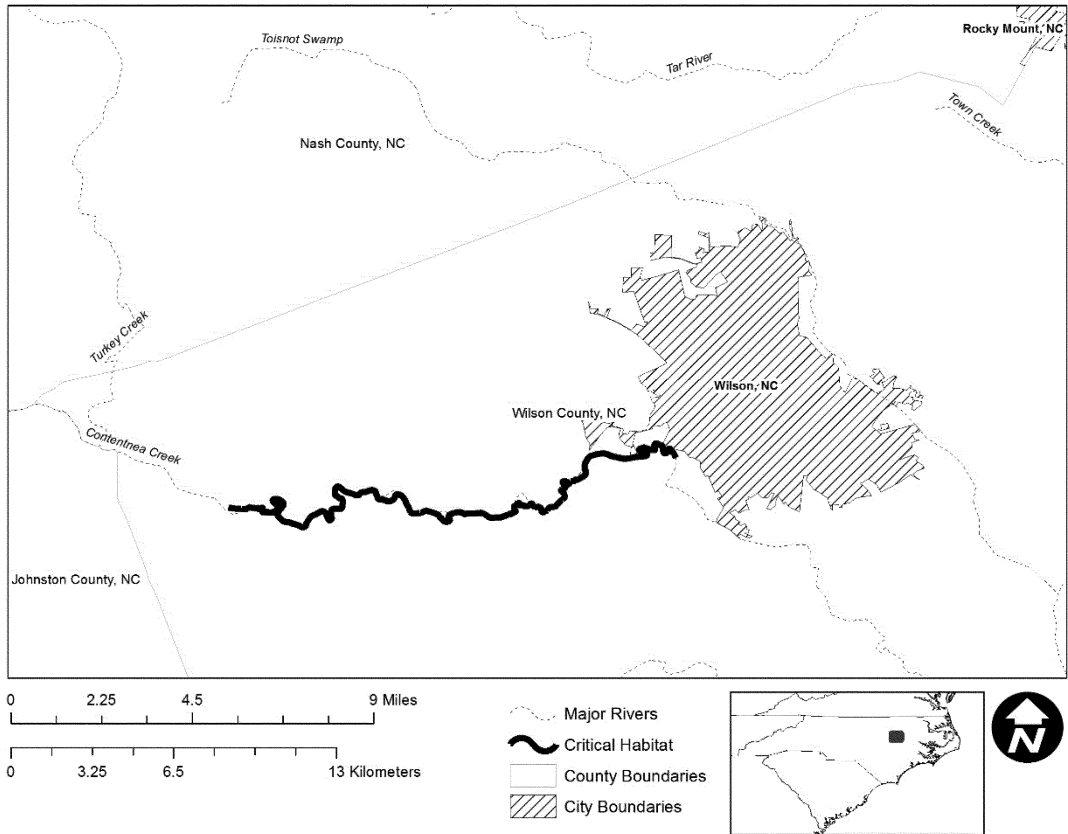
(11) Unit 6: NR3—Contentnea Creek, Wilson County, North Carolina.

(i) This unit consists of 15 river miles (24 river kilometers) of Contentnea Creek from Buckhorn Reservoir to

Wiggins Mill Reservoir. Unit 6 includes stream habitat up to bankfull height.

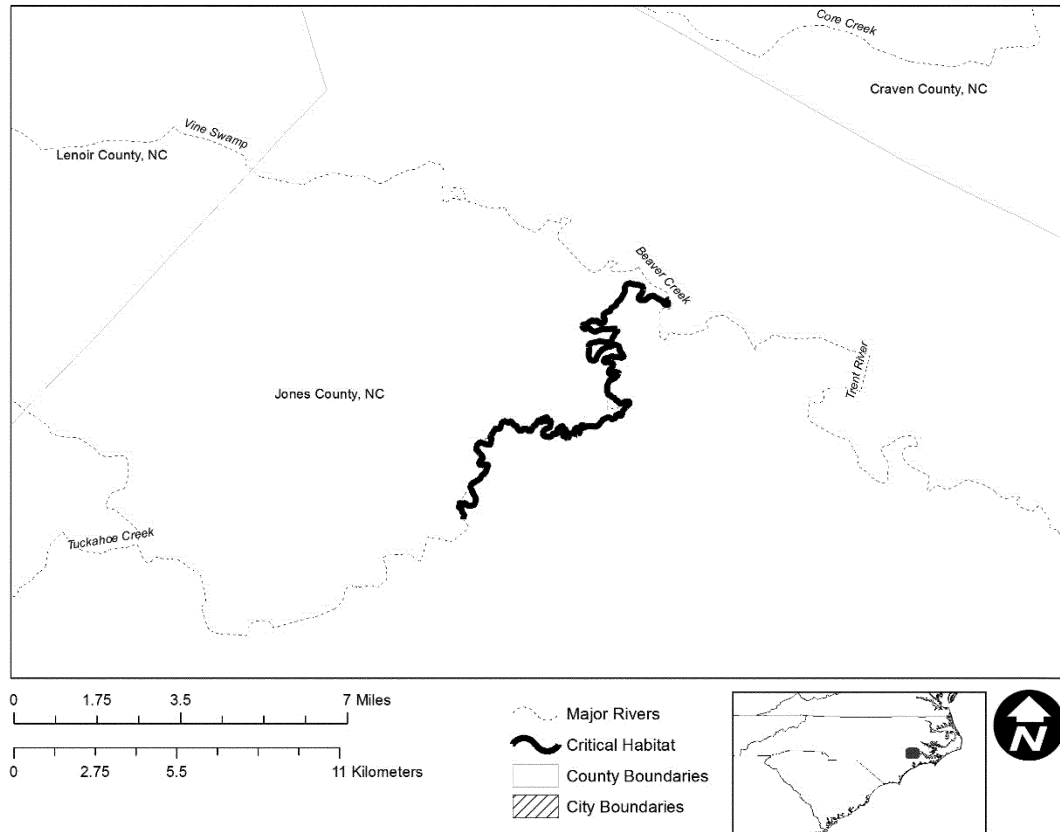
(ii) Map of Unit 6 follows:

Map of Unit 6 - Contentnea Creek Critical Habitat Unit for Carolina Madtom



- (12) Unit 7: TR1–Trent River, Jones County, North Carolina.
- (i) This unit consists of 15 river miles (24 river kilometers) of the Trent River between the confluence with Cypress Creek and Beaver Creek. Unit 7 includes stream habitat up to bankfull height.

(ii) Map of Unit 7 follows:

Map of Unit 7 - Trent River Critical Habitat Unit for Carolina Madtom

* * * * *

Martha Williams,

*Principal Deputy Director, Exercising the
Delegated Authority of the Director, U.S. Fish
and Wildlife Service.*

[FR Doc. 2021-11600 Filed 6-8-21; 8:45 am]

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